

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**RC PETITION**

DO NOT WRITE IN THIS SPACE

Case No.

29-RC-216327

Date Filed

3/12/18

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

**2a. Name of Employer**

Fairfield Inn & Suites by Marriott & The Waterford Hotel Group as a joint employer

**2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code)**

181 3rd Avenue Brooklyn NY 11217

**3a. Employer Representative - Name and Title**

Marc Freud - Owner

**3b. Address (If same as 2b - state same)**

914 Hartford Turnpike P.O. BOX 715 Waterford, CT 06385

**3c. Tel. No.**

(718)522-4000

**3d. Cell No.**

**3e. Fax No.**

(718)522-4011

**3f. E-Mail Address**

**4a. Type of Establishment (Factory, mine, wholesaler, etc.)**

Hotel and Conference Center

**4b. Principal product or service**

Hospitality Services

**5a. City and State where unit is located:**

Brooklyn, NY

**5b. Description of Unit Involved**

**Included:** All full time and regular part-time front desk employees, bellmen, housemen, housekeepers, food and beverage employees.

**Excluded:** Executive management, sales personnel, all other employees including supervisors and guards as defined by the National Labor Relations Act as amended.

**6a. No. of Employees in Unit:**

24

**6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner?** Yes ☒ No ☐

**Check One:**



7a. Request for recognition as Bargaining Representative was made on (Date) 03/09/2018 and Employer declined recognition on or about No reply (Date) (If no reply received, so state).



7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

**8a. Name of Recognized or Certified Bargaining Agent (if none, so state).**

N/A

**8b. Address**

N/A

**8c. Tel No.**

N/A

**8d. Cell No.**

N/A

**8e. Fax No.**

N/A

**8f. E-Mail Address**

N/A

**8g. Affiliation, if any**

N/A

**8h. Date of Recognition or Certification**

N/A

**8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)**

N/A

**9. Is there now a strike or picketing at the Employer's establishment(s) involved?** NO If so, approximately how many employees are participating? N/A

(Name of labor organization) N/A, has picketed the Employer since (Month, Day, Year) N/A

**10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)**

N/A

**10a. Name**

N/A

**10b. Address**

N/A

**10c. Tel. No.**

N/A

**10d. Cell No.**

N/A

**10e. Fax No.**

N/A

**10f. E-Mail Address**

N/A

**11. Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.

**11a. Election Type:** ☒ Manual ☐ Mail ☐ Mixed Manual/Mail

**11b. Election Date(s):**

04/06/2018

**11c. Election Time(s):**

7:00a.m-8:30a.m / 3:00p.m-4:00p.m

**11d. Election Location(s):**

Lower level conference room

**12a. Full Name of Petitioner (including local name and number)**

Warehouse Production Sales & Allied Service Employees Union Local 811, AFL-CIO

**12b. Address (street and number, city, state, and ZIP code)**

534 3rd Avenue Brooklyn NY 11215

**12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state)**

International Union of Allied Novelty and Production Workers, AFL-CIO

**12d. Tel No.**

(718)333-5476

**12e. Cell No.**

**12f. Fax No.**

(718)333-5482

**12g. E-Mail Address**

workerjusticelocal811@gmail.com

**13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.**

**13a. Name and Title**

Jose Merced - President

**13b. Address (street and number, city, state, and ZIP code)**

534 3rd Avenue Brooklyn NY 11215

**13c. Tel No.**

(718)333-5476

**13d. Cell No.**

**13e. Fax No.**

(718)333-5482

**13f. E-Mail Address**

workerjusticelocal811@gmail.com

**I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.**

**Name (Print)**

Jose Merced

**Signature**



**Title**

President

**Date**

03/09/2018

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

72-511-6-1111007  
NLRB-REGION 29



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 29  
Two Metro Tech Center  
Suite 5100  
Brooklyn, NY 11201-3838

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (718)330-7713  
Fax: (718)330-7579



Download  
NLRB  
Mobile App

March 12, 2018

**URGENT**

Fairfield Inn & Suites by Marriott & The Waterford Hotel Group as a joint employer  
181 3rd Ave  
Brooklyn, NY 11217-3003

Re: Fairfield Inn & Suites by Marriott & The  
Waterford Hotel Group as a joint employer  
Case 29-RC-216327

Dear Sir or Madam:

Enclosed is a copy of a petition that WAREHOUSE PRODUCTION SALES & ALLIED SERVICE EMPLOYEES UNION LOCAL 811 filed with the National Labor Relations Board (NLRB) seeking to represent certain of your employees. After a petition is filed, the employer is required to promptly take certain actions so please read this letter carefully to make sure you are aware of the employer's obligations. This letter tells you how to contact the Board agent who will be handling this matter, about the requirement to post and distribute the Notice of Petition for Election, the requirement to complete and serve a Statement of Position Form, a scheduled hearing in this matter, other information needed including a voter list, your right to be represented, and NLRB procedures.

**Investigator:** This petition will be investigated by Board Agent SARAH N. HURLEY whose telephone number is (718)765-6200. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Attorney TARA O'ROURKE whose telephone number is (718)765-6213. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

**Required Posting and Distribution of Notice:** You must post the enclosed Notice of Petition for Election by close of business, **March 14, 2018**, in conspicuous places, including all places where notices to employees are customarily posted. The Notice of Petition for Election must be posted so all pages are simultaneously visible. If you customarily communicate with your employees electronically, you must also distribute the notice electronically to them. You must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Posting and distribution of the Notice of Petition for Election will inform the employees whose representation is at issue and the employer of their rights and obligations under the National Labor Relations Act in the representation context. Failure to post or distribute the notice may be grounds for setting aside an election if proper and timely objections are filed.

**Required Statement of Position:** In accordance with Section 102.63(b) of the Board's Rules, the employer is required to complete the enclosed Statement of Position form (including the attached Commerce Questionnaire), have it signed by an authorized representative, and file a completed copy (with all required attachments) with this office and serve it on all parties named in the petition such that it is received by them by **noon Eastern Time on March 19, 2018**. This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form may be e-Filed, but unlike other e-Filed documents, will *not* be timely if filed on the due date but after noon March 19, 2018.** If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

*List(s) of Employees:* The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

*Failure to Supply Information:* Failure to supply the information requested by this form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to

the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

**Notice of Hearing:** Enclosed is a Notice of Representation Hearing to be conducted at **9:30 AM on Tuesday, March 20, 2018 at a fifth-floor hearing room, 2 MetroTech Center, 5th Floor, Brooklyn, NY 11201**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, the NLRB will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party, the regional director may postpone the hearing for up to 2 business days upon a showing of special circumstances and for more than 2 business days upon a showing of extraordinary circumstances. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

**Other Information Needed Now:** Please submit to this office, as soon as possible, the following information needed to handle this matter:

- (a) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any of your employees in the unit involved in the petition (the petitioned-for unit);
- (b) The name and contact information for any other labor organization (union) claiming to represent any of the employees in the petitioned-for unit;
- (c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.
- (d) If you desire a formal check of the showing of interest, you must provide an alphabetized payroll list of employees in the petitioned-for unit, with their job classifications, for the payroll period immediately before the date of this petition. Such a payroll list should be submitted as early as possible prior to the hearing. Ordinarily a formal check of the showing of interest is not performed using the employee list submitted as part of the Statement of Position.

March 12, 2018

**Voter List:** If an election is held in this matter, the employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular telephone numbers) of eligible voters. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. I am advising you of this requirement now, so that you will have ample time to prepare this list. When feasible, the list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

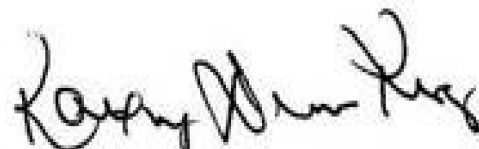
**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, [www.nlr.gov](http://www.nlr.gov), or at the Regional office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any “inside knowledge” or favored relationship with the NLRB. Their knowledge regarding this matter was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Procedures:** Also enclosed is a Description of Procedures in Certification and Decertification Cases (Form NLRB-4812). We strongly urge everyone to submit documents and other materials by E-Filing (not e-mailing) through our website, [www.nlr.gov](http://www.nlr.gov). E-Filing your documents places those documents in our official electronic case files. On all your correspondence regarding the petition, please include the case name and number indicated above.

Information about the NLRB and our customer service standards is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



KATHY DREW-KING  
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)

cc: Marc Freud, Owner  
914 Hartford Turnpike  
P.O. Box 715  
Waterford, CT 06385



# National Labor Relations Board



## NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that **WAREHOUSE PRODUCTION SALES & ALLIED SERVICE EMPLOYEES UNION LOCAL 811** has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 29-RC-216327 seeking an election to become certified as the representative of the employees of **Fairfield Inn & Suites by Marriott & The Waterford Hotel Group** as a joint employer in the unit set forth below:

**Included:** All full time and regular part-time front desk employees, bellmen, housemen, housekeepers, food and beverage employees.  
**Excluded:** Executive management, sales personnel, all other employees including supervisors and guards as defined by the National Labor Relations Act as amended.

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

## YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

## PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. **NO FINAL DECISIONS HAVE BEEN MADE YET** regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

**IF AN ELECTION IS HELD**, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

# ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to [www.nlr.gov](http://www.nlr.gov) or contact the NLRB at (718)330-7713.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.



## National Labor Relations Board







**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**



**Fairfield Inn & Suites by Marriott & The Waterford  
Hotel Group as a joint employer**

**Employer**

**and**

**WAREHOUSE PRODUCTION SALES & ALLIED  
SERVICE EMPLOYEES UNION LOCAL 811**

**Petitioner**

**Case 29-RC-216327**

**NOTICE OF REPRESENTATION HEARING**

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 9:30 AM on **Tuesday, March 20, 2018** and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located at a fifth-floor hearing room, 2 MetroTech Center, 5th Floor, Brooklyn, NY 11201, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Fairfield Inn & Suites by Marriott & The Waterford Hotel Group as a joint employer must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that it is received by them by no later than **noon** Eastern time on March 19, 2018. The Statement of Position may be E-Filed but, unlike other E-Filed documents, must be filed by noon Eastern on the due date in order to be timely. If an election agreement is signed before the due date of the Statement of Position is filed, the Regional Office is required to be

Dated: March 12, 2018

---

KATHY DREW-KING  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 29  
Two Metro Tech Center  
Suite 5100  
Brooklyn, NY 11201-3838

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

<b>Fairfield Inn &amp; Suites by Marriott &amp; The Waterford Hotel Group as a joint employer</b>  <b>Employer</b>  <b>and</b>  <b>WAREHOUSE PRODUCTION SALES &amp; ALLIED SERVICE EMPLOYEES UNION LOCAL 811</b>  <b>Petitioner</b>	<b>Case 29-RC-216327</b>
---	--------------------------

**AFFIDAVIT OF SERVICE OF: Petition dated March 12, 2018, Notice of Representation Hearing dated March 12, 2018, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on March 12, 2018, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Marc Freud, Owner  
914 Hartford Turnpike  
P.O. Box 715  
Waterford, CT 06385  
Fax: (718)522-4011

Fairfield Inn & Suites by Marriott & The  
Waterford Hotel Group as a joint employer  
181 3rd Ave  
Brooklyn, NY 11217-3003  
Fax: (718)522-4011

JOSE MERCED, President  
WAREHOUSE PRODUCTION SALES &  
ALLIED SERVICE EMPLOYEES UNION,  
LOCAL 811  
534 3RD AVE STE  
GROUND FLOOR  
BROOKLYN, NY 11215  
workerjusticelocal811@gmail.com  
Fax: (718)333-5482

March 12, 2018

Date

CECILIA LEON, Designated Agent of NLRB

Name

/s/ CECILIA LEON

Signature

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

DESCRIPTION OF REPRESENTATION CASE PROCEDURES  
IN CERTIFICATION AND DECERTIFICATION CASES

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

**Right to be Represented** – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at [www.nlr.gov](http://www.nlr.gov) or forward it to the NLRB Regional Office handling the petition as soon as possible.

**Filing and Service of Petition** – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

**Notice of Hearing** – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews both the petition and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 8 days (excluding intervening federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position. Included with the Notice of Representation Hearing are a copy of the petition, this form, a Statement of Position form, a Notice of Petition for Election, and a letter advising how to contact the Board agent who will be handling the case and discussing those documents.

**Hearing Postponement:** The regional director may postpone the hearing for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request should be filed with the regional director. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

**Statement of Position Form and List(s) of Employees** – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. As part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department).

Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list

must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon on the business day before the opening of the hearing. The regional director may postpone the due date for filing and serving the Statement of Position for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. The Statement of Position form may be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion."

A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

**Posting and Distribution of Notice of Petition for Election** – Within 2 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically if the employer customarily communicates with its employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

**Election Agreements** – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

**Hearing Cancellation Based on Agreement of the Parties** – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

**Hearing** – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

*Purpose of Hearing:* The purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative. Disputes concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated or resolved before an election is conducted.

*Issues at Hearing:* Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; and eligibility formulas. At the hearing, the Statement of Position will be received into evidence and, prior to the introduction of further evidence, all other parties will respond on the record to each issue raised in the Statement. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

***Preclusion:*** At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

***Conduct of Hearing:*** If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

***Official Record:*** An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made in the hearing room will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

***Motions and Objections:*** All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

***Election Details:*** Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

***Oral Argument and Briefs:*** Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be filed only upon special permission of the regional director and within the

time and addressing the subjects permitted by the regional director. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. If allowed, briefs should be double-spaced on 8½ by 11 inch paper. Briefs must be filed in accordance with the provisions of Section 102.111(b) of the Board's Rules. E-Filing of briefs through the Board's website, [www.nlrb.gov](http://www.nlrb.gov), is encouraged, but not required. Facsimile transmission of briefs is NOT permitted.

**Regional Director Decision** - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 14 days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefore.

**Voter List** – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge.

The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction.

To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**Waiver of Time to Use Voter List** – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

**Election** – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

**Withdrawal or Dismissal** – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.



## **REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM**

**Completing and Filing this Form:** The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You may E-File your Statement of Position at [www.nlr.gov](http://www.nlr.gov), but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

**Note:** *Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to complete items 3, 5, 6, and 8a-8e of the form.*

**Required Lists:** The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

**Consequences of Failure to Supply Information:** Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**STATEMENT OF POSITION**

**DO NOT WRITE IN THIS SPACE**

Case No. <b>29-RC-216327</b>	Date Filed <b>March 12, 2018</b>
---------------------------------	-------------------------------------

**INSTRUCTIONS:** Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.  
**Note:** Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b )			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards )			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.			
Added		Excluded	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at <a href="http://www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015">www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015</a> . A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an appropriate unit. (Attachment D)			
State your position with respect to the details of any election that may be conducted in this matter. 8a. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
<b>9. Representative who will accept service of all papers for purposes of the representation proceeding</b>			
9a. Full name and title of authorized representative		9b. Signature of authorized representative	9c. Date
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.	9h. Cell No.

**WILLFUL FALSE STATEMENTS ON THIS STATEMENT OF POSITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. Code, Title 18, Section 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.



**QUESTIONNAIRE ON COMMERCE INFORMATION**

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

**CASE NAME****CASE NUMBER**

29-RC-216327

**1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)****2. TYPE OF ENTITY**☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify )**3. IF A CORPORATION or LLC**A. STATE OF INCORPORATION  
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

**4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS****5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

**9. DURING THE MOST RECENT (Check appropriate box): ☐ CALENDAR YR ☐ 12 MONTHS or ☐ FISCAL YR (FY dates )****YES NO**A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.  
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.  
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.  
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (*Check the largest amount*)  
☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.I. **Did you begin operations within the last 12 months?** If yes, specify date: \_\_\_\_\_**10 ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?**☐ YES ☐ NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS**

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

**12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE**

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 29  
Two Metro Tech Center  
Suite 5100  
Brooklyn, NY 11201-3838

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (718)330-7713  
Fax: (718)330-7579



Download  
NLRB  
Mobile App

March 12, 2018

**URGENT**

workerjusticelocal811@gmail.com  
(718)333-5482

JOSE MERCED, President  
WAREHOUSE PRODUCTION SALES & ALLIED SERVICE EMPLOYEES UNION,  
LOCAL 811  
534 3RD AVE STE  
GROUND FLOOR  
BROOKLYN, NY 11215

Re: Fairfield Inn & Suites by Marriott & The  
Waterford Hotel Group as a joint employer  
Case 29-RC-216327

Dear Mr. MERCED:

The enclosed petition that you filed with the National Labor Relations Board (NLRB) has been assigned the above case number. This letter tells you how to contact the Board agent who will be handling this matter; explains your obligation to provide the originals of the showing of interest; notifies you of a hearing; describes the employer's obligation to post and distribute a Notice of Petition for Election, complete a Statement of Position and provide a voter list; requests that you provide certain information; notifies you of your right to be represented; and discusses some of our procedures including how to submit documents to the NLRB.

**Investigator:** This petition will be investigated by Board Agent SARAH N. HURLEY whose telephone number is (718)765-6200. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Attorney TARA O'ROURKE whose telephone number is (718)765-6213. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

**Showing of Interest:** If the Showing of Interest you provided in support of your petition was submitted electronically or by fax, the original documents which constitute the Showing of Interest containing handwritten signatures must be delivered to the Regional office within **2 business days**. If the originals are not received within that time the Region will dismiss your petition.

**Notice of Hearing:** Enclosed is a Notice of Representation Hearing to be conducted at **9:30 AM on Tuesday, March 20, 2018 at a fifth-floor hearing room, 2 MetroTech Center,**

**5th Floor, Brooklyn, NY 11201**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, we will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party, the regional director may postpone the hearing for up to 2 business days upon a showing of special circumstances and for more than 2 business days upon a showing of extraordinary circumstances. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

**Posting and Distribution of Notice:** The Employer must post the enclosed Notice of Petition for Election by close of business, **March 14, 2018**, in conspicuous places, including all places where notices to employees are customarily posted. If it customarily communicates with its employees electronically, it must also distribute the notice electronically to them. The Employer must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Failure to post or distribute the notice may be grounds for setting aside the election if proper and timely objections are filed.

**Statement of Position:** In accordance with Section 102.63(b) of the Board's Rules, the Employer is required to complete the enclosed Statement of Position form, have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition by **noon Eastern Time on March 19, 2018**. The Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the Employer contends that the proposed unit is inappropriate, it must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The Employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit.

**Voter List:** If an election is held in this matter, the Employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names and addresses of all eligible voters, including their shifts, job classifications, work locations, and other contact information including available personal email addresses and available personal home and cellular telephone numbers. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. When feasible, the list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the Employer must file the voter list with the Regional Office. However, a petitioner and/or union entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483, which is available on the NLRB's website or from an NLRB office. A waiver will not be effective unless all parties who are entitled to the voter list agree to waive the same number of days.

**Information Needed Now:** Please submit to this office, as soon as possible, the following information needed to handle this matter:

- (a) The correct name of the Union as stated in its constitution or bylaws.
- (b) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any employees in the petitioned-for unit.
- (c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.
- (d) The name and contact information for any other labor organization (union) claiming to represent or have an interest in any of the employees in the petitioned-for unit and for any employer who may be a joint employer of the employees in the proposed unit. Failure to disclose the existence of an interested party may delay the processing of the petition.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before the NLRB. In view of our policy of processing these cases expeditiously, if you wish to be represented, you should obtain representation promptly. Your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the NLRB. Their knowledge regarding this matter was obtained only through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Procedures:** Also enclosed is a Description of Procedures in Certification and Decertification Cases (Form NLRB-4812). We strongly urge everyone to submit documents and other materials by E-Filing (not e-mailing) through our website, [www.nlr.gov](http://www.nlr.gov). On all your correspondence regarding the petition, please include the case name and number indicated above.

Information about the NLRB and our customer service standards is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

March 12, 2018

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathy Drew-King". The signature is fluid and cursive, with the first name "Kathy" being more prominent and the last name "Drew-King" following in a similar style.

KATHY DREW-KING  
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)



# National Labor Relations Board



## NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that **WAREHOUSE PRODUCTION SALES & ALLIED SERVICE EMPLOYEES UNION LOCAL 811** has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 29-RC-216327 seeking an election to become certified as the representative of the employees of **Fairfield Inn & Suites by Marriott & The Waterford Hotel Group** as a joint employer in the unit set forth below:

**Included:** All full time and regular part-time front desk employees, bellmen, housemen, housekeepers, food and beverage employees.  
**Excluded:** Executive management, sales personnel, all other employees including supervisors and guards as defined by the National Labor Relations Act as amended.

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

## YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

## PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. **NO FINAL DECISIONS HAVE BEEN MADE YET** regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

**IF AN ELECTION IS HELD**, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

# ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to [www.nlr.gov](http://www.nlr.gov) or contact the NLRB at (718)330-7713.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.



## National Labor Relations Board





**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**



**Fairfield Inn & Suites by Marriott & The Waterford  
Hotel Group as a joint employer**

**Employer**

**and**

**WAREHOUSE PRODUCTION SALES & ALLIED  
SERVICE EMPLOYEES UNION LOCAL 811**

**Petitioner**

**Case 29-RC-216327**

**NOTICE OF REPRESENTATION HEARING**

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 9:30 AM on **Tuesday, March 20, 2018** and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located at a fifth-floor hearing room, 2 MetroTech Center, 5th Floor, Brooklyn, NY 11201, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Fairfield Inn & Suites by Marriott & The Waterford Hotel Group as a joint employer must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Eastern time on March 19, 2018. The Statement of Position may be E-Filed but, unlike other E-Filed documents, must be filed by noon Eastern on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, it is not required to be filed.

Dated: March 12, 2018

KATHY DREW-KING  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 29  
Two Metro Tech Center  
Suite 5100  
Brooklyn, NY 11201-3838



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

<b>Fairfield Inn &amp; Suites by Marriott &amp; The Waterford Hotel Group as a joint employer</b>  <b>Employer</b>  <b>and</b>  <b>WAREHOUSE PRODUCTION SALES &amp; ALLIED SERVICE EMPLOYEES UNION LOCAL 811</b>  <b>Petitioner</b>	<b>Case 29-RC-216327</b>
---	--------------------------

**AFFIDAVIT OF SERVICE OF: Petition dated March 12, 2018, Notice of Representation Hearing dated March 12, 2018, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on March 12, 2018, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Marc Freud, Owner  
914 Hartford Turnpike  
P.O. Box 715  
Waterford, CT 06385  
Fax: (718)522-4011

Fairfield Inn & Suites by Marriott & The  
Waterford Hotel Group as a joint employer  
181 3rd Ave  
Brooklyn, NY 11217-3003  
Fax: (718)522-4011

JOSE MERCED, President  
WAREHOUSE PRODUCTION SALES &  
ALLIED SERVICE EMPLOYEES UNION,  
LOCAL 811  
534 3RD AVE STE  
GROUND FLOOR  
BROOKLYN, NY 11215  
workerjusticelocal811@gmail.com  
Fax: (718)333-5482

March 12, 2018

Date

CECILIA LEON, Designated Agent of NLRB

Name

/s/ CECILIA LEON

Signature

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF REPRESENTATION CASE PROCEDURES  
IN CERTIFICATION AND DECERTIFICATION CASES**

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

**Right to be Represented** – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at [www.nlr.gov](http://www.nlr.gov) or forward it to the NLRB Regional Office handling the petition as soon as possible.

**Filing and Service of Petition** – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

**Notice of Hearing** – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews both the petition and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 8 days (excluding intervening federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position. Included with the Notice of Representation Hearing are a copy of the petition, this form, a Statement of Position form, a Notice of Petition for Election, and a letter advising how to contact the Board agent who will be handling the case and discussing those documents.

**Hearing Postponement:** The regional director may postpone the hearing for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request should be filed with the regional director. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

**Statement of Position Form and List(s) of Employees** – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. As part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department).

Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list

must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon on the business day before the opening of the hearing. The regional director may postpone the due date for filing and serving the Statement of Position for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. The Statement of Position form may be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion."

A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

**Posting and Distribution of Notice of Petition for Election** – Within 2 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically if the employer customarily communicates with its employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

**Election Agreements** – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

**Hearing Cancellation Based on Agreement of the Parties** – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

**Hearing** – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

*Purpose of Hearing:* The purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative. Disputes concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated or resolved before an election is conducted.

*Issues at Hearing:* Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; and eligibility formulas. At the hearing, the Statement of Position will be received into evidence and, prior to the introduction of further evidence, all other parties will respond on the record to each issue raised in the Statement. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

***Preclusion:*** At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

***Conduct of Hearing:*** If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

***Official Record:*** An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made in the hearing room will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

***Motions and Objections:*** All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

***Election Details:*** Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

***Oral Argument and Briefs:*** Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be filed only upon special permission of the regional director and within the

time and addressing the subjects permitted by the regional director. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. If allowed, briefs should be double-spaced on 8½ by 11 inch paper. Briefs must be filed in accordance with the provisions of Section 102.111(b) of the Board's Rules. E-Filing of briefs through the Board's website, [www.nlrb.gov](http://www.nlrb.gov), is encouraged, but not required. Facsimile transmission of briefs is NOT permitted.

**Regional Director Decision** - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 14 days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefore.

**Voter List** – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge.

The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction.

To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**Waiver of Time to Use Voter List** – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

**Election** – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

**Withdrawal or Dismissal** – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

## **REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM**

**Completing and Filing this Form:** The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You may E-File your Statement of Position at [www.nlrb.gov](http://www.nlrb.gov), but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

**Note:** *Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to complete items 3, 5, 6, and 8a-8e of the form.*

**Required Lists:** The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

**Consequences of Failure to Supply Information:** Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**STATEMENT OF POSITION**

**DO NOT WRITE IN THIS SPACE**

Case No. <b>29-RC-216327</b>	Date Filed <b>March 12, 2018</b>
---------------------------------	-------------------------------------

**INSTRUCTIONS:** Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.  
**Note:** Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards)			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.			
Added		Excluded	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at <a href="http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015">www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015</a> . A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an appropriate unit. (Attachment D)			
State your position with respect to the details of any election that may be conducted in this matter. 8a. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
<b>9. Representative who will accept service of all papers for purposes of the representation proceeding</b>			
9a. Full name and title of authorized representative		9b. Signature of authorized representative	9c. Date
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.	9h. Cell No.

**WILLFUL FALSE STATEMENTS ON THIS STATEMENT OF POSITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. Code, Title 18, Section 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

**QUESTIONNAIRE ON COMMERCE INFORMATION**

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

**CASE NAME****CASE NUMBER**

29-RC-216327

**1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)****2. TYPE OF ENTITY**☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify )**3. IF A CORPORATION or LLC**A. STATE OF INCORPORATION  
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

**4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS****5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

**9. DURING THE MOST RECENT (Check appropriate box): ☐ CALENDAR YR ☐ 12 MONTHS or ☐ FISCAL YR (FY dates )****YES NO**A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.  
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.  
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.  
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (*Check the largest amount*)☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.I. **Did you begin operations within the last 12 months?** If yes, specify date: \_\_\_\_\_**10 ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?**☐ YES ☐ NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS**

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

**12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE**

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**FAIRFIELD INN & SUITES BY MARRIOTT &  
THE WATERFORD HOTEL GROUP AS A JOINT  
EMPLOYER**

**Employer**

**and**

**Case 29-RC-216327**

**WAREHOUSE PRODUCTION SALES & ALLIED  
SERVICE EMPLOYEES UNION LOCAL 811**

**Petitioner**

**And**

**NEW YORK HOTEL & MOTEL TRADES  
COUNCIL**

**ORDER CANCELLING HEARING AND HOLDING CASE IN ABEYANCE**

On March 12, 2018, Warehouse Production Sales & Allied Service Employees Union Local 811, AFL-CIO (the Petitioner) filed a petition seeking to represent certain employees of Fairfield Inn & Suites by Marriott & the Waterford Hotel Group as a joint employer (the Employer). New York Hotel & Motel Trades Council, AFL-CIO (the Intervenor) intervened on the basis of a showing of interest.

On March 22, 2018, the Petitioner requested that the instant proceeding be held in abeyance pursuant to Section 11018.1 National Labor Relations Board Casehandling Manual – Representation Proceedings.

Accordingly,

**IT IS ORDERED** that the petition be held in abeyance pursuant to Section 11018.1 pending the processing of Article XX of the AFL-CIO Constitution.

**IT IS FURTHER ORDERED** that the Notice of Representation Hearing previously issued in this matter is withdrawn and the hearing is cancelled.

Dated: March 22, 2018

---

KATHY DREW-KING  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 29  
Two Metro Tech Center  
Suite 5100  
Brooklyn, NY 11201-3838

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**FAIRFIELD INN & SUITES BY MARRIOTT &  
THE WATERFORD HOTEL GROUP AS A JOINT  
EMPLOYER**

**Employer**

**and**

**Case 29-RC-216327**

**WAREHOUSE PRODUCTION SALES & ALLIED  
SERVICE EMPLOYEES UNION LOCAL 811**

**Petitioner**

**and**

**NEW YORK HOTEL AND MOTEL TRADES  
COUNCIL**

**Intervenor**

**ORDER RESCHEDULING HEARING**

**IT IS HEREBY ORDERED** that the hearing in the above-entitled matter is rescheduled from **March 23, 2018**, at 9:30 AM to **Monday, March 26, 2018**, at 9:30 a.m. in a fifth-floor hearing room, 2 MetroTech Center, 5th Floor, Brooklyn, NY 11201. The hearing will continue on consecutive days until concluded.

The Statement of Position in this matter must be filed with the Regional Director and served on the parties listed on the petition by no later than **noon** Eastern time on **March 23, 2018**. The Statement of Position may be e-Filed but, unlike other e-Filed documents, must be filed by noon Eastern time on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: March 23, 2018

/s/

---

Nancy Reibstein  
ACTING REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 29  
Two Metro Tech Center  
Suite 5100  
Brooklyn, NY 11201-3838

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**FAIRFIELD INN & SUITES BY MARRIOTT &  
THE WATERFORD HOTEL GROUP AS A JOINT  
EMPLOYER**

**Employer**

**and**

**Case 29-RC-216327**

**WAREHOUSE PRODUCTION SALES & ALLIED  
SERVICE EMPLOYEES UNION LOCAL 811**

**Petitioner**

**and**

**NEW YORK HOTEL & MOTEL TRADES  
COUNCIL**

**Intervenor**

**ORDER RESUMING PROCESSING OF PETITION AND RESCHEDULING HEARING**

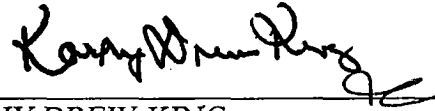
On March 23, 2018, the undersigned issued an Order Cancelling Hearing and Holding Case in Abeyance pursuant to Section 11018.1 of the National Labor Relations Board's Representation Casehandling Manual, pending the processing of proceedings under Article XXI of the AFL-CIO Constitution. Those Article XXI proceedings have concluded. Accordingly,

**IT IS HEREBY ORDERED** that the processing of the above case resume and the hearing is rescheduled for **9:30 a.m. on Tuesday, May 8, 2018** in a Fifth Floor hearing room at Two Metrotech Center, Brooklyn, New York. The Hearing will continue on consecutive days until concluded.

The Statement of Position in this matter must be filed with the Regional Director and served on the parties listed on the petition by no later than **noon Eastern time on Monday, May 7, 2018**. The Statement of Position may be e-Filed but, unlike other e-filed documents, must be filed by noon Eastern time on the due date in order to be timely. If an election agreement is

signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: April 30, 2018

A handwritten signature in black ink, appearing to read "Kathy Drew-King", is written over a horizontal line.

KATHY DREW-KING  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 29  
Two Metro Tech Center  
Suite 5100  
Brooklyn, NY 11201-3838

FORM NLRB-502 (RC)  
(4-15)UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**AMENDED RC PETITION**

DO NOT WRITE IN THIS SPACE

Case No.

29-RC-216327

Date Filed

5/31/18

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

**2a. Name of Employer** Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC **2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code)** 181 3rd Avenue, Brooklyn, NY 11217

**3a. Employer Representative - Name and Title**

Marc J. Freud

**3b. Address (If same as 2b - state same)**

515 Madison Avenue, New York, NY 10017

**3c. Tel. No.**

212-421-8900

**3d. Cell No.**

N/A

**3e. Fax No.**

212-421-7900

**3f. E-Mail Address**

helloworld@troutbrookco.com

**4a. Type of Establishment (Factory, mine, wholesaler, etc.)**

Residence Inn

**4b. Principal product or service**

Hospitality

**5a. City and State where unit is located:**

New York, NY

**5b. Description of Unit Involved**

**Included:** All full-time and regular part-time front-desk employees, housemen/bellmen, housekeepers, laundry attendants and food and beverage employees employed by Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC at 181 3rd Avenue, Brooklyn, NY

**Excluded:** Executive management, sales personnel, fire safety directors, all other employees including guards and supervisors as defined in the National Labor Relations Act

**6a. No. of Employees in Unit:**

29

**6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner?** Yes ☒ No ☐

**Check One:**

7a. Request for recognition as Bargaining Representative was made on (Date) \_\_\_\_\_ and Employer declined recognition on or about \_\_\_\_\_

7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act. did not reply (Date) (If no reply received, so state):**8a. Name of Recognized or Certified Bargaining Agent (if none, so state).**

N/A

**8b. Address**

N/A

**8c. Tel. No.**

N/A

**8d. Cell No.**

N/A

**8e. Fax No.**

N/A

**8f. E-Mail Address**

N/A

**8g. Affiliation, if any**

N/A

**8h. Date of Recognition or Certification**

N/A

**8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)**

N/A

**9. Is there now a strike or picketing at the Employer's establishment(s) involved?** N/A If so, approximately how many employees are participating? \_\_\_\_\_

(Name of labor organization) N/A, has picketed the Employer since (Month, Day, Year) \_\_\_\_\_

**10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)**

**10a. Name**

New York Hotel &amp; Motel Trades Council, AFL-CIO

**10b. Address**

305 W. 44th Street, New York, NY 10036

**10c. Tel. No.**

212-245-8100

**10d. Cell No.**

N/A

**10e. Fax No.**

N/A

**10f. E-Mail Address**

**11. Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election. ACCEPTABLE

**11a. Election Type:** ☒ Manual ☐ Mail ☐ Mixed Manual/Mail

**11b. Election Date(s):**  
6/15/18

**11c. Election Time(s):**  
6:45-8:15 am and 2:00-4:45 pm

**11d. Election Location(s):**  
Conference Room/lower level

**12a. Full Name of Petitioner (including local name and number)**

Warehouse Production Sales &amp; Allied Service Employees Union

**12b. Address (street and number, city, state, and ZIP code)**

534 3rd Avenue, Brooklyn, NY 11215

**12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state)**

International Union of Allied Novelty and Production Workers, AFL-CIO

**12d. Tel. No.**

312-738-0822

**12e. Cell No.**

N/A

**12f. Fax No.**

312-455-8857

**12g. E-Mail Address**

mark@csjunion.org

**13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.**

**13a. Name and Title** O'Connor & Mangan, P.C.

**13b. Address (street and number, city, state, and ZIP code)**

271 North Avenue, Suite 206, New Rochelle, NY 10801

**13c. Tel. No.**

914-576-7630, Ext. 15

**13d. Cell No.**

917-538-1863

**13e. Fax No.**

914-576-7682

**13f. E-Mail Address**

ocmlawyers@aol.com

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

**Name (Print)**

J. Warren Mangan, Esq.

**Signature****Title**

Attorney

**Date**

5/31/18

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

## PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 29  
Two Metro Tech Center  
Suite 5100  
Brooklyn, NY 11201-3838

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (718)330-7713  
Fax: (718)330-7579



Download  
NLRB  
Mobile App

May 31, 2018

**URGENT**

Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC  
181 3rd Ave  
Brooklyn, NY 11217-3003

Marc J. Freud  
515 Madison Avenue, 31st Floor  
New York, NY 10017

Re: Troutbrook Company LLC d/b/a Brooklyn  
181 Hospitality LLC  
Case 29-RC-216327

Dear Sir or Madam:

Enclosed is a copy of an amended petition that Warehouse Production Sales & Allied Service Employees Union Local 811, Local 811, AFL-CIO filed with the National Labor Relations Board (NLRB) seeking to represent certain of your employees. After a petition is filed, the employer is required to promptly take certain actions so please read this letter carefully to make sure you are aware of the employer's obligations. This letter tells you how to contact the Board agent who will be handling this matter, about the requirement to post and distribute the Notice of Petition for Election, the requirement to complete and serve a Statement of Position Form, a scheduled hearing in this matter, other information needed including a voter list, your right to be represented, and NLRB procedures.

**Investigator:** This petition will be investigated by Board Agent SARAH N. HURLEY whose telephone number is (718)765-6200. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Attorney TARA O'ROURKE whose telephone number is (718)765-6213. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

**Required Posting and Distribution of Notice:** You must post the enclosed Notice of Petition for Election by close of business, **June 4, 2018**, in conspicuous places, including all places where notices to employees are customarily posted. The Notice of Petition for Election must be posted so all pages are simultaneously visible. If you customarily communicate with your employees electronically, you must also distribute the notice electronically to them. You must maintain the posting until the amended petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Posting and distribution of the Notice of Petition for Election will inform the employees whose representation is at issue and the employer of their rights and

obligations under the National Labor Relations Act in the representation context. Failure to post or distribute the notice may be grounds for setting aside an election if proper and timely objections are filed.

**Required Statement of Position:** In accordance with Section 102.63(b) of the Board's Rules, the employer is required to complete the enclosed Statement of Position form (including the attached Commerce Questionnaire), have it signed by an authorized representative, and file a completed copy (with all required attachments) with this office and serve it on all parties named in the petition such that it is received by them by **noon Eastern Time on March 22, 2018**. This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form may be e-Filed, but unlike other e-Filed documents, will *not* be timely if filed on the due date but after noon March 22, 2018.** If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

*List(s) of Employees:* The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

*Failure to Supply Information:* Failure to supply the information requested by this form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party



contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

**Notice of Hearing:** Enclosed is a Notice of Representation Hearing to be conducted at **9:30 AM on Friday, June 8, 2018 at a fifth-floor hearing room, 2 MetroTech Center, 5th Floor, Brooklyn, NY 11201**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, the NLRB will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party, the regional director may postpone the hearing for up to 2 business days upon a showing of special circumstances and for more than 2 business days upon a showing of extraordinary circumstances. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

**Other Information Needed Now:** Please submit to this office, as soon as possible, the following information needed to handle this matter:

- (a) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any of your employees in the unit involved in the petition (the petitioned-for unit);
- (b) The name and contact information for any other labor organization (union) claiming to represent any of the employees in the petitioned-for unit;
- (c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.
- (d) If you desire a formal check of the showing of interest, you must provide an alphabetized payroll list of employees in the petitioned-for unit, with their job classifications, for the payroll period immediately before the date of this petition.

May 31, 2018

Such a payroll list should be submitted as early as possible prior to the hearing. Ordinarily a formal check of the showing of interest is not performed using the employee list submitted as part of the Statement of Position.

**Voter List:** If an election is held in this matter, the employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular telephone numbers) of eligible voters. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. I am advising you of this requirement now, so that you will have ample time to prepare this list. When feasible, the list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, [www.nlr.gov](http://www.nlr.gov), or at the Regional office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any “inside knowledge” or favored relationship with the NLRB. Their knowledge regarding this matter was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Procedures:** Also enclosed is a Description of Procedures in Certification and Decertification Cases (Form NLRB-4812). We strongly urge everyone to submit documents and other materials by E-Filing (not e-mailing) through our website, [www.nlr.gov](http://www.nlr.gov). E-Filing your documents places those documents in our official electronic case files. On all your correspondence regarding the petition, please include the case name and number indicated above.

Information about the NLRB and our customer service standards is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

May 31, 2018

Very truly yours,



KATHY DREW-KING  
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)

cc: Marc J. Freud, Managing Principal  
515 Madison Ave Fl 31  
New York, NY 10022-5418

Howard Wexler, ESQ.  
Seyfarth Shaw LLP  
620 Eighth Avenue, 31st Floor  
New York, NY 10018

Paul Galligan, ESQ.  
Seyfarth Shaw LLP  
620th Avenue,  
New York, NY 10018

Glenn J. Smith, ESQ.  
Seyfarth Shaw LLP  
620th Avenue,  
New York, NY 10018

Raymond Pascucci, ESQ.  
Bond, Shoeneck & King, LLC  
ONE LINCOLN CENTER  
110 W FAYETTE ST  
SYRACUSE, NY 13202-1324



# National Labor Relations Board



## NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that Warehouse Production Sales & Allied Service Employees Union Local 811, Local 811, AFL-CIO has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 29-RC-216327 seeking an election to become certified as the representative of the employees of Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC in the unit set forth below:

Included: All full time and regular part-time front desk employees, bellmen, housemen, housekeepers, food and beverage employees.<br><br>Excluded: Executive management, sales personnel, all other employees including supervisors and guards as defined by the National Labor Relations Act as amended.

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

## YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

## PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. **NO FINAL DECISIONS HAVE BEEN MADE YET** regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

**IF AN ELECTION IS HELD**, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

# ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to [www.nlr.gov](http://www.nlr.gov) or contact the NLRB at (718)330-7713.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.



## National Labor Relations Board





**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**



<b>Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC</b>  <b>Employer</b>  <b>and</b>  <b>Warehouse Production Sales &amp; Allied Service Employees Union Local 811, Local 811, AFL-CIO</b>  <b>Petitioner</b>	<b>Case 29-RC-216327</b>
--	--------------------------


**NOTICE OF REPRESENTATION HEARING**

The Petitioner filed the attached amended petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 9:30 AM on **Friday, June 8, 2018** and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located at a fifth-floor hearing room, 2 MetroTech Center, 5th Floor, Brooklyn, NY 11201, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that it is received by them by no later than **noon** Eastern time on March 22, 2018. The Statement of Position may be E-Filed but, unlike other E-Filed documents, must be filed by noon Eastern on the due date in order to be timely. If an election agreement is signed by all parties and the due date of the Statement of Position, the Statement

Dated: May 31, 2018

  
\_\_\_\_\_  
KAREN E. DAVIS  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 29  
Two Metro Tech Center  
Suite 5100  
Brooklyn, NY 11201-3838

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

<b>Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC</b>  <b>Employer</b>  <b>and</b>  <b>Warehouse Production Sales &amp; Allied Service Employees Union Local 811, Local 811, AFL-CIO</b>  <b>Petitioner</b>	<b>Case 29-RC-216327</b>
--	--------------------------

**AFFIDAVIT OF SERVICE OF: Petition dated March 12, 2018, Notice of Representation Hearing dated May 31, 2018, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on May 31, 2018, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Marc J. Freud, Managing Principal  
515 Madison Ave Fl 31  
New York, NY 10022-5418  
helloworld@troutbrookco.com  
Fax: (212)421-7900

Howard Wexler, ESQ.  
Seyfarth Shaw LLP  
620 Eighth Avenue, 31st Floor  
New York, NY 10018  
hwexler@seyfarth.com  
Fax: (917)344-1314

Paul Galligan, ESQ.  
Seyfarth Shaw LLP  
620th Avenue,  
New York, NY 10018  
pgalligan@seyfarth.com  
Fax: (212)218-5526

Glenn J. Smith, ESQ.  
Seyfarth Shaw LLP  
620th Avenue,  
New York, NY 10018  
gsmith@seyfarth.com

Troutbrook Company LLC d/b/a Brooklyn  
181 Hospitality LLC  
181 3rd Ave  
Brooklyn, NY 11217-3003  
Fax: (718)522-4011

J. Warren Mangan, ESQ.  
O'Connor & Mangan, PC  
271 North Avenue  
New Rochelle, NY 10801  
ocmlawyers@aol.com  
Fax: (914)576-7682

JOSE MERCED, President  
WAREHOUSE PRODUCTION SALES &  
ALLIED SERVICE EMPLOYEES UNION,  
LOCAL 811  
534 3RD AVE STE  
GROUND FLOOR  
BROOKLYN, NY 11215  
workerjusticelocal811@gmail.com  
Fax: (718)333-5482

JOSEPH FARELLI, ESQ.  
PITTA LLP  
120 Broadway, 28th Floor  
New York, NY 10271-2901  
jfarelli@pittagiblin.com  
Fax: (212)652-3891

BARRY N. SALTZMAN, ESQ.  
PITTA LLP  
120 Broadway, 28th Floor  
New York, NY 10271  
bsaltzman@pittalaw.com  
Fax: (212)652-3891

Gideon Martin, Assistant General Counsel  
New York Hotel and Motel Trades Council,  
AFL-CIO  
707 8th Ave  
New York, NY 10036-7111  
gmartin@nyhtc.org

New York Hotel & Motel Trades Council,  
AFL-CIO  
305 W 44th St  
New York, NY 10036-5498

Raymond Pascucci, ESQ.  
Bond, Shoenek & King, LLC  
ONE LINCOLN CENTER  
110 W FAYETTE ST  
SYRACUSE, NY 13202-1324  
rpascucci@bsk.com  
Fax: (315)218-8100

Marc J. Freud  
515 Madison Avenue, 31st Floor  
New York, NY 10017

May 31, 2018

Date

CECILIA LEON, Designated Agent of NLRB

Name

/s/ CECILIA LEON

Signature



UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF REPRESENTATION CASE PROCEDURES  
IN CERTIFICATION AND DECERTIFICATION CASES**

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

**Right to be Represented** – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at [www.nlr.gov](http://www.nlr.gov) or forward it to the NLRB Regional Office handling the petition as soon as possible.

**Filing and Service of Petition** – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

**Notice of Hearing** – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews both the petition and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 8 days (excluding intervening federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position. Included with the Notice of Representation Hearing are a copy of the petition, this form, a Statement of Position form, a Notice of Petition for Election, and a letter advising how to contact the Board agent who will be handling the case and discussing those documents.

**Hearing Postponement:** The regional director may postpone the hearing for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request should be filed with the regional director. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

**Statement of Position Form and List(s) of Employees** – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. As part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department).

Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list

must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon on the business day before the opening of the hearing. The regional director may postpone the due date for filing and serving the Statement of Position for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. The Statement of Position form may be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion."

A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

**Posting and Distribution of Notice of Petition for Election** – Within 2 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically if the employer customarily communicates with its employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

**Election Agreements** – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

**Hearing Cancellation Based on Agreement of the Parties** – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

**Hearing** – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

*Purpose of Hearing:* The purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative. Disputes concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated or resolved before an election is conducted.

*Issues at Hearing:* Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; and eligibility formulas. At the hearing, the Statement of Position will be received into evidence and, prior to the introduction of further evidence, all other parties will respond on the record to each issue raised in the Statement. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

***Preclusion:*** At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

***Conduct of Hearing:*** If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

***Official Record:*** An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made in the hearing room will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

***Motions and Objections:*** All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

***Election Details:*** Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

***Oral Argument and Briefs:*** Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be filed only upon special permission of the regional director and within the

time and addressing the subjects permitted by the regional director. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. If allowed, briefs should be double-spaced on 8½ by 11 inch paper. Briefs must be filed in accordance with the provisions of Section 102.111(b) of the Board's Rules. E-Filing of briefs through the Board's website, [www.nlr.gov](http://www.nlr.gov), is encouraged, but not required. Facsimile transmission of briefs is NOT permitted.

**Regional Director Decision** - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 14 days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefore.

**Voter List** – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge.

The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction.

To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**Waiver of Time to Use Voter List** – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

**Election** – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

**Withdrawal or Dismissal** – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

## **REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM**

**Completing and Filing this Form:** The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You may E-File your Statement of Position at [www.nlrb.gov](http://www.nlrb.gov), but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

**Note:** *Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to complete items 3, 5, 6, and 8a-8e of the form.*

**Required Lists:** The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

**Consequences of Failure to Supply Information:** Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**STATEMENT OF POSITION**

**DO NOT WRITE IN THIS SPACE**

Case No. <b>29-RC-216327</b>	Date Filed <b>March 12, 2018</b>
---------------------------------	-------------------------------------

**INSTRUCTIONS:** Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.  
**Note:** Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards)			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.			
Added		Excluded	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at <a href="http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015">www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015</a> . A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an appropriate unit. (Attachment D)			
State your position with respect to the details of any election that may be conducted in this matter. 8a. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
<b>9. Representative who will accept service of all papers for purposes of the representation proceeding</b>			
9a. Full name and title of authorized representative		9b. Signature of authorized representative	9c. Date
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.	9h. Cell No.

**WILLFUL FALSE STATEMENTS ON THIS STATEMENT OF POSITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. Code, Title 18, Section 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

**QUESTIONNAIRE ON COMMERCE INFORMATION**

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

**CASE NAME****CASE NUMBER**

29-RC-216327

**1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)****2. TYPE OF ENTITY**☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify )**3. IF A CORPORATION or LLC**A. STATE OF INCORPORATION  
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

**4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS****5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

**9. DURING THE MOST RECENT (Check appropriate box): ☐ CALENDAR YR ☐ 12 MONTHS or ☐ FISCAL YR (FY dates )****YES NO**A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.  
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.  
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.  
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (*Check the largest amount*)☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.I. **Did you begin operations within the last 12 months?** If yes, specify date: \_\_\_\_\_**10 ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?**☐ YES ☐ NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS**

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

**12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE**

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 29  
Two Metro Tech Center  
Suite 5100  
Brooklyn, NY 11201-3838

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (718)330-7713  
Fax: (718)330-7579



Download  
NLRB  
Mobile App

May 31, 2018

**URGENT**

New York Hotel & Motel Trades Council, AFL-CIO  
305 W 44th St  
New York, NY 10036-5498

Re: Troutbrook Company LLC d/b/a Brooklyn  
181 Hospitality LLC  
Case 29-RC-216327

Dear Sir or Madam:

Enclosed is a copy of an amended petition that Warehouse Production Sales & Allied Service Employees Union Local 811, Local 811, AFL-CIO filed with the National Labor Relations Board (NLRB) regarding representation of certain of Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC employees. This petition is being sent to you because our investigation has disclosed that your union may have an interest in this proceeding. This letter tells you how to contact the Board agent who will be handling this matter, explains your obligation to request intervention and provide a showing of interest, notifies you of a hearing, describes the employer's obligation to post and distribute a Notice of Petition for Election and complete a Statement of Position, informs you of your right to be represented, and discusses some of our procedures including how to submit documents to the NLRB.

**Investigator:** This petition will be investigated by Board Agent SARAH N. HURLEY whose telephone number is (718)765-6200. If you choose to intervene, the Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Attorney TARA O'ROURKE whose telephone number is (718)765-6213. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

**Procedure for Intervention and Showing of Interest:** To become a party to this case, you must make a request to intervene in accordance with Section 102.65 of the National Labor Relations Board Rules and Regulations. The request should state the grounds upon which you claim to have an interest in the proceeding. You may make the request in writing by filing it with the Regional Director and serving a copy on the other parties to the proceeding. You may also orally request to intervene at the hearing described below. At the time you request to intervene, you should submit evidence of a showing of interest among the involved employees. This showing of interest may be any one of the following:



- (1) A current or recently expired collective-bargaining agreement with the Employer covering some of the employees involved;
- (2) Authorization cards or a list of signatures designating your union as the signers' agent for collective-bargaining purposes;
- (3) Records showing involved employees who are members of your union; or
- (4) Certification or recognition as the currently recognized bargaining agent of the employees involved.

You should submit your evidence of interest within 48 hours after having been given notice of this proceeding. The timeliness of your submission may affect your right to participate in further processing of the petition. See Sections 11024.2 and 11026.2 of the Board's Casehandling Manual to review the detailed circumstances under which you may or may not be permitted to intervene.

**Required Statement of Position:** If you decide to intervene and submit a showing of interest indicating support of 10 percent or more of the proposed unit, you are required to complete a Statement of Position by **noon Eastern Time on March 22, 2018**. This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form may be E-Filed but unlike other E-Filed documents will *not* be timely if filed on the due date but after noon Eastern Time.** If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

Failure to supply the information requested by this form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to

timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

**Notice of Hearing:** Enclosed is a Notice of Representation Hearing to be conducted at **9:30 AM on Friday, June 8, 2018 at a fifth-floor hearing room, 2 MetroTech Center, 5th Floor, Brooklyn, NY 11201**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, the NLRB will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party, the regional director may postpone the hearing for up to 2 business days a showing of special circumstances and for more than 2 business days upon a showing of extraordinary circumstances. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

**Posting and Distribution of Notice:** The Employer must post the enclosed Notice of Petition for Election by close of business, **June 4, 2018**, in conspicuous places, including all places where notices to employees are customarily posted. If it customarily communicates with its employees electronically, it must also distribute the notice electronically to them. The Employer must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Failure to post or distribute the notice may be grounds for setting aside the election if proper and timely objections are filed.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before the NLRB. In view of our policy of processing these cases expeditiously, if you wish to be represented, you should obtain representation promptly. Your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any “inside knowledge” or favored relationship with the NLRB. Their knowledge regarding this matter was obtained only through access to information that must be made available to any member of the public under the Freedom of Information Act.

May 31, 2018

**Procedures:** Also enclosed is a Description of Procedures in Certification and Decertification Cases (Form NLRB-4812). We strongly urge everyone to submit documents and other materials by E-Filing (not e-mailing) through our website, [www.nlr.gov](http://www.nlr.gov). On all your correspondence regarding the petition, please include the case name and number indicated above.

Information about the NLRB and our customer service standards is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



KATHY DREW-KING  
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)

cc: JOSEPH FARELLI, ESQ.  
PITTA LLP  
120 Broadway, 28th Floor  
New York, NY 10271-2901

BARRY N. SALTZMAN, ESQ.  
PITTA LLP  
120 Broadway, 28th Floor  
New York, NY 10271

Gideon Martin, Assistant General Counsel  
New York Hotel and Motel Trades  
Council, AFL-CIO  
707 8th Ave  
New York, NY 10036-7111



## National Labor Relations Board



# NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that Warehouse Production Sales & Allied Service Employees Union Local 811, Local 811, AFL-CIO has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 29-RC-216327 seeking an election to become certified as the representative of the employees of Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC in the unit set forth below:

**Included:** All full time and regular part-time front desk employees, bellmen, housemen, housekeepers, food and beverage employees. **Excluded:** Executive management, sales personnel, all other employees including supervisors and guards as defined by the National Labor Relations Act as amended.

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

## YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

## PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. **NO FINAL DECISIONS HAVE BEEN MADE YET** regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

**IF AN ELECTION IS HELD**, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

# ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to [www.nlr.gov](http://www.nlr.gov) or contact the NLRB at (718)330-7713.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.



## National Labor Relations Board





**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**



<b>Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC</b>  <b>Employer</b>  <b>and</b>  <b>Warehouse Production Sales &amp; Allied Service Employees Union Local 811, Local 811, AFL-CIO</b>  <b>Petitioner</b>	<b>Case 29-RC-216327</b>
--	--------------------------


**NOTICE OF REPRESENTATION HEARING**

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 9:30 AM on **Friday, June 8, 2018** and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located at a fifth-floor hearing room, 2 MetroTech Center, 5th Floor, Brooklyn, NY 11201, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Eastern time on March 22, 2018. The Statement of Position may be E-Filed but, unlike other E-Filed documents, must be filed by noon Eastern time on the due date in order to be timely. If an election agreement is signed by all parties and returned by the due date of the Statement of Position, the Statement of

Dated: May 31, 2018

  
\_\_\_\_\_  
KATHY DREW-KING  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 29  
Two Metro Tech Center  
Suite 5100  
Brooklyn, NY 11201-3838

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

<b>Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC</b>  <b>Employer</b>  <b>and</b>  <b>Warehouse Production Sales &amp; Allied Service Employees Union Local 811, Local 811, AFL-CIO</b>  <b>Petitioner</b>	<b>Case 29-RC-216327</b>
--	--------------------------

**AFFIDAVIT OF SERVICE OF: Petition dated March 12, 2018, Notice of Representation Hearing dated May 31, 2018, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on May 31, 2018, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Marc J. Freud, Managing Principal  
515 Madison Ave Fl 31  
New York, NY 10022-5418  
helloworld@troutbrookco.com  
Fax: (212)421-7900

Howard Wexler, ESQ.  
Seyfarth Shaw LLP  
620 Eighth Avenue, 31st Floor  
New York, NY 10018  
hwexler@seyfarth.com  
Fax: (917)344-1314

Paul Galligan, ESQ.  
Seyfarth Shaw LLP  
620th Avenue,  
New York, NY 10018  
pgalligan@seyfarth.com  
Fax: (212)218-5526

Glenn J. Smith, ESQ.  
Seyfarth Shaw LLP  
620th Avenue,  
New York, NY 10018  
gsmith@seyfarth.com

Troutbrook Company LLC d/b/a Brooklyn  
181 Hospitality LLC  
181 3rd Ave  
Brooklyn, NY 11217-3003  
Fax: (718)522-4011

J. Warren Mangan, ESQ.  
O'Connor & Mangan, PC  
271 North Avenue  
New Rochelle, NY 10801  
ocmlawyers@aol.com  
Fax: (914)576-7682

JOSE MERCED, President  
WAREHOUSE PRODUCTION SALES &  
ALLIED SERVICE EMPLOYEES UNION,  
LOCAL 811  
534 3RD AVE STE  
GROUND FLOOR  
BROOKLYN, NY 11215  
workerjusticelocal811@gmail.com  
Fax: (718)333-5482

JOSEPH FARELLI, ESQ.  
PITTA LLP  
120 Broadway, 28th Floor  
New York, NY 10271-2901  
jfarelli@pittagiblin.com  
Fax: (212)652-3891

BARRY N. SALTZMAN, ESQ.  
PITTA LLP  
120 Broadway, 28th Floor  
New York, NY 10271  
bsaltzman@pittalaw.com  
Fax: (212)652-3891

Gideon Martin, Assistant General Counsel  
New York Hotel and Motel Trades Council,  
AFL-CIO  
707 8th Ave  
New York, NY 10036-7111  
gmartin@nyhtc.org

New York Hotel & Motel Trades Council,  
AFL-CIO  
305 W 44th St  
New York, NY 10036-5498

Raymond Pascucci, ESQ.  
Bond, Shoenek & King, LLC  
ONE LINCOLN CENTER  
110 W FAYETTE ST  
SYRACUSE, NY 13202-1324  
rpascucci@bsk.com  
Fax: (315)218-8100

Marc J. Freud  
515 Madison Avenue, 31st Floor  
New York, NY 10017

May 31, 2018

Date

CECILIA LEON, Designated Agent of NLRB

Name

/s/ CECILIA LEON

Signature



UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF REPRESENTATION CASE PROCEDURES  
IN CERTIFICATION AND DECERTIFICATION CASES**

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

**Right to be Represented** – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at [www.nlr.gov](http://www.nlr.gov) or forward it to the NLRB Regional Office handling the petition as soon as possible.

**Filing and Service of Petition** – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

**Notice of Hearing** – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews both the petition and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 8 days (excluding intervening federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position. Included with the Notice of Representation Hearing are a copy of the petition, this form, a Statement of Position form, a Notice of Petition for Election, and a letter advising how to contact the Board agent who will be handling the case and discussing those documents.

**Hearing Postponement:** The regional director may postpone the hearing for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request should be filed with the regional director. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

**Statement of Position Form and List(s) of Employees** – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. As part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department).

Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list

must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon on the business day before the opening of the hearing. The regional director may postpone the due date for filing and serving the Statement of Position for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. The Statement of Position form may be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion."

A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

**Posting and Distribution of Notice of Petition for Election** – Within 2 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically if the employer customarily communicates with its employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

**Election Agreements** – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

**Hearing Cancellation Based on Agreement of the Parties** – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

**Hearing** – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

*Purpose of Hearing:* The purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative. Disputes concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated or resolved before an election is conducted.

*Issues at Hearing:* Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; and eligibility formulas. At the hearing, the Statement of Position will be received into evidence and, prior to the introduction of further evidence, all other parties will respond on the record to each issue raised in the Statement. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

***Preclusion:*** At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

***Conduct of Hearing:*** If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

***Official Record:*** An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made in the hearing room will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

***Motions and Objections:*** All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

***Election Details:*** Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

***Oral Argument and Briefs:*** Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be filed only upon special permission of the regional director and within the

time and addressing the subjects permitted by the regional director. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. If allowed, briefs should be double-spaced on 8½ by 11 inch paper. Briefs must be filed in accordance with the provisions of Section 102.111(b) of the Board's Rules. E-Filing of briefs through the Board's website, [www.nlr.gov](http://www.nlr.gov), is encouraged, but not required. Facsimile transmission of briefs is NOT permitted.

**Regional Director Decision** - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 14 days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefore.

**Voter List** – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge.

The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction.

To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**Waiver of Time to Use Voter List** – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

**Election** – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

**Withdrawal or Dismissal** – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

## **REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM**

**Completing and Filing this Form:** The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You may E-File your Statement of Position at [www.nlrb.gov](http://www.nlrb.gov), but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

**Note:** *Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to complete items 3, 5, 6, and 8a-8e of the form.*

**Required Lists:** The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

**Consequences of Failure to Supply Information:** Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**STATEMENT OF POSITION**

**DO NOT WRITE IN THIS SPACE**

Case No.

29-RC-216327

Date Filed

March 12, 2018

**INSTRUCTIONS:** Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.

**Note:** Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards)			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.			
Added		Excluded	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at <a href="http://www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015">www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015</a> . A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an appropriate unit. (Attachment D)			
State your position with respect to the details of any election that may be conducted in this matter. 8a. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
<b>9. Representative who will accept service of all papers for purposes of the representation proceeding</b>			
9a. Full name and title of authorized representative		9b. Signature of authorized representative	9c. Date
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.	9h. Cell No.

**WILLFUL FALSE STATEMENTS ON THIS STATEMENT OF POSITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. Code, Title 18, Section 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

**QUESTIONNAIRE ON COMMERCE INFORMATION**

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

**CASE NAME****CASE NUMBER**

29-RC-216327

**1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)****2. TYPE OF ENTITY**☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify )**3. IF A CORPORATION or LLC**A. STATE OF INCORPORATION  
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

**4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS****5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

**9. DURING THE MOST RECENT (Check appropriate box): ☐ CALENDAR YR ☐ 12 MONTHS or ☐ FISCAL YR (FY dates )****YES NO**A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.  
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.  
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.  
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (*Check the largest amount*)☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.I. **Did you begin operations within the last 12 months?** If yes, specify date: \_\_\_\_\_**10 ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?**☐ YES ☐ NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS**

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

**12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE**

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 29  
Two Metro Tech Center  
Suite 5100  
Brooklyn, NY 11201-3838

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (718)330-7713  
Fax: (718)330-7579



Download  
NLRB  
Mobile App

May 31, 2018

**URGENT**

workerjusticelocal811@gmail.com  
(718)333-5482

JOSE MERCED, President  
WAREHOUSE PRODUCTION SALES & ALLIED SERVICE EMPLOYEES UNION,  
LOCAL 811  
534 3RD AVE STE  
GROUND FLOOR  
BROOKLYN, NY 11215

Re: Troutbrook Company LLC d/b/a Brooklyn  
181 Hospitality LLC  
Case 29-RC-216327

Dear Mr. MERCED:

The enclosed amended petition that you filed with the National Labor Relations Board (NLRB) has been assigned the above case number. This letter tells you how to contact the Board agent who will be handling this matter; explains your obligation to provide the originals of the showing of interest; notifies you of a hearing; describes the employer's obligation to post and distribute a Notice of Petition for Election, complete a Statement of Position and provide a voter list; requests that you provide certain information; notifies you of your right to be represented; and discusses some of our procedures including how to submit documents to the NLRB.

**Investigator:** This petition will be investigated by Board Agent SARAH N. HURLEY whose telephone number is (718)765-6200. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Attorney TARA O'ROURKE whose telephone number is (718)765-6213. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

**Showing of Interest:** If the Showing of Interest you provided in support of your petition was submitted electronically or by fax, the original documents which constitute the Showing of Interest containing handwritten signatures must be delivered to the Regional office within **2 business days**. If the originals are not received within that time the Region will dismiss your petition.

**Notice of Hearing:** Enclosed is a Notice of Representation Hearing to be conducted at **9:30 AM on Friday, June 8, 2018 at a fifth-floor hearing room, 2 MetroTech Center, 5th**



**Floor, Brooklyn, NY 11201**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, we will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party, the regional director may postpone the hearing for up to 2 business days upon a showing of special circumstances and for more than 2 business days upon a showing of extraordinary circumstances. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

**Posting and Distribution of Notice:** The Employer must post the enclosed Notice of Petition for Election by close of business, **June 4, 2018**, in conspicuous places, including all places where notices to employees are customarily posted. If it customarily communicates with its employees electronically, it must also distribute the notice electronically to them. The Employer must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Failure to post or distribute the notice may be grounds for setting aside the election if proper and timely objections are filed.

**Statement of Position:** In accordance with Section 102.63(b) of the Board's Rules, the Employer is required to complete the enclosed Statement of Position form, have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition by **noon Eastern Time on March 22, 2018**. The Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the Employer contends that the proposed unit is inappropriate, it must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The Employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit.

**Voter List:** If an election is held in this matter, the Employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names and addresses of all eligible voters, including their shifts, job classifications, work locations, and other contact information including available personal email addresses and available personal home and cellular telephone numbers. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. When feasible, the list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the Employer must file the voter list with the Regional Office. However, a petitioner and/or union entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483, which is available on the NLRB's website or from an NLRB office. A waiver will not be effective unless all parties who are entitled to the voter list agree to waive the same number of days.

**Information Needed Now:** Please submit to this office, as soon as possible, the following information needed to handle this matter:

- (a) The correct name of the Union as stated in its constitution or bylaws.
- (b) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any employees in the petitioned-for unit.
- (c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.
- (d) The name and contact information for any other labor organization (union) claiming to represent or have an interest in any of the employees in the petitioned-for unit and for any employer who may be a joint employer of the employees in the proposed unit. Failure to disclose the existence of an interested party may delay the processing of the petition.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before the NLRB. In view of our policy of processing these cases expeditiously, if you wish to be represented, you should obtain representation promptly. Your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the NLRB. Their knowledge regarding this matter was obtained only through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Procedures:** Also enclosed is a Description of Procedures in Certification and Decertification Cases (Form NLRB-4812). We strongly urge everyone to submit documents and other materials by E-Filing (not e-mailing) through our website, [www.nlr.gov](http://www.nlr.gov). On all your correspondence regarding the petition, please include the case name and number indicated above.

Information about the NLRB and our customer service standards is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

May 31, 2018

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathy Drew-King". The signature is fluid and cursive, with the first name "Kathy" being more prominent and the last name "Drew-King" following in a similar style.

KATHY DREW-KING  
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)

cc: J. Warren Mangan, ESQ.  
O'Connor & Mangan, PC  
271 North Avenue  
New Rochelle, NY 10801



# National Labor Relations Board



## NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that Warehouse Production Sales & Allied Service Employees Union Local 811, Local 811, AFL-CIO has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 29-RC-216327 seeking an election to become certified as the representative of the employees of Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC in the unit set forth below:

Included: All full time and regular part-time front desk employees, bellmen, housemen, housekeepers, food and beverage employees.<br><br>Excluded: Executive management, sales personnel, all other employees including supervisors and guards as defined by the National Labor Relations Act as amended.

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

## YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

## PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. **NO FINAL DECISIONS HAVE BEEN MADE YET** regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

**IF AN ELECTION IS HELD**, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

# ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to [www.nlr.gov](http://www.nlr.gov) or contact the NLRB at (718)330-7713.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.



## National Labor Relations Board





**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**



<b>Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC</b>  <b>Employer</b>  <b>and</b>  <b>Warehouse Production Sales &amp; Allied Service Employees Union Local 811, Local 811, AFL-CIO</b>  <b>Petitioner</b>	<b>Case 29-RC-216327</b>
--	--------------------------

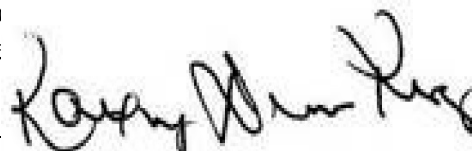
**NOTICE OF REPRESENTATION HEARING**

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 9:30 AM on **Friday, June 8, 2018** and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located at a fifth-floor hearing room, 2 MetroTech Center, 5th Floor, Brooklyn, NY 11201, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that it is received by them by no later than **noon** Eastern time on March 22, 2018. The Statement of Position may be E-Filed but, unlike other E-Filed documents, must be filed by noon Eastern on the due date in order to be timely. If an election agreement is signed by all parties and the due date of the Statement of Position, the Statement must be filed by the due date.

Dated: May 31, 2018



REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 29  
Two Metro Tech Center  
Suite 5100  
Brooklyn, NY 11201-3838

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

<b>Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC</b>  <b>Employer</b>  <b>and</b>  <b>Warehouse Production Sales &amp; Allied Service Employees Union Local 811, Local 811, AFL-CIO</b>  <b>Petitioner</b>	<b>Case 29-RC-216327</b>
--	--------------------------

**AFFIDAVIT OF SERVICE OF: Petition dated March 12, 2018, Notice of Representation Hearing dated May 31, 2018, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on May 31, 2018, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Marc J. Freud, Managing Principal  
515 Madison Ave Fl 31  
New York, NY 10022-5418  
helloworld@troutbrookco.com  
Fax: (212)421-7900

Howard Wexler, ESQ.  
Seyfarth Shaw LLP  
620 Eighth Avenue, 31st Floor  
New York, NY 10018  
hwexler@seyfarth.com  
Fax: (917)344-1314

Paul Galligan, ESQ.  
Seyfarth Shaw LLP  
620th Avenue,  
New York, NY 10018  
pgalligan@seyfarth.com  
Fax: (212)218-5526

Glenn J. Smith, ESQ.  
Seyfarth Shaw LLP  
620th Avenue,  
New York, NY 10018  
gsmith@seyfarth.com

Troutbrook Company LLC d/b/a Brooklyn  
181 Hospitality LLC  
181 3rd Ave  
Brooklyn, NY 11217-3003  
Fax: (718)522-4011

J. Warren Mangan, ESQ.  
O'Connor & Mangan, PC  
271 North Avenue  
New Rochelle, NY 10801  
ocmlawyers@aol.com  
Fax: (914)576-7682

JOSE MERCED, President  
WAREHOUSE PRODUCTION SALES &  
ALLIED SERVICE EMPLOYEES UNION,  
LOCAL 811  
534 3RD AVE STE  
GROUND FLOOR  
BROOKLYN, NY 11215  
workerjusticelocal811@gmail.com  
Fax: (718)333-5482

JOSEPH FARELLI, ESQ.  
PITTA LLP  
120 Broadway, 28th Floor  
New York, NY 10271-2901  
jfarelli@pittagiblin.com  
Fax: (212)652-3891

BARRY N. SALTZMAN, ESQ.  
PITTA LLP  
120 Broadway, 28th Floor  
New York, NY 10271  
bsaltzman@pittalaw.com  
Fax: (212)652-3891

Gideon Martin, Assistant General Counsel  
New York Hotel and Motel Trades Council,  
AFL-CIO  
707 8th Ave  
New York, NY 10036-7111  
gmartin@nyhtc.org

New York Hotel & Motel Trades Council,  
AFL-CIO  
305 W 44th St  
New York, NY 10036-5498

Raymond Pascucci, ESQ.  
Bond, Shoenek & King, LLC  
ONE LINCOLN CENTER  
110 W FAYETTE ST  
SYRACUSE, NY 13202-1324  
rpascucci@bsk.com  
Fax: (315)218-8100

Marc J. Freud  
515 Madison Avenue, 31st Floor  
New York, NY 10017

May 31, 2018

Date

CECILIA LEON, Designated Agent of NLRB

Name

/s/ CECILIA LEON

Signature



UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF REPRESENTATION CASE PROCEDURES  
IN CERTIFICATION AND DECERTIFICATION CASES**

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

**Right to be Represented** – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at [www.nlr.gov](http://www.nlr.gov) or forward it to the NLRB Regional Office handling the petition as soon as possible.

**Filing and Service of Petition** – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

**Notice of Hearing** – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews both the petition and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 8 days (excluding intervening federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position. Included with the Notice of Representation Hearing are a copy of the petition, this form, a Statement of Position form, a Notice of Petition for Election, and a letter advising how to contact the Board agent who will be handling the case and discussing those documents.

**Hearing Postponement:** The regional director may postpone the hearing for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request should be filed with the regional director. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

**Statement of Position Form and List(s) of Employees** – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. As part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department).

Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list

must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon on the business day before the opening of the hearing. The regional director may postpone the due date for filing and serving the Statement of Position for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. The Statement of Position form may be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion."

A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

**Posting and Distribution of Notice of Petition for Election** – Within 2 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically if the employer customarily communicates with its employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

**Election Agreements** – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

**Hearing Cancellation Based on Agreement of the Parties** – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

**Hearing** – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

*Purpose of Hearing:* The purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative. Disputes concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated or resolved before an election is conducted.

*Issues at Hearing:* Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; and eligibility formulas. At the hearing, the Statement of Position will be received into evidence and, prior to the introduction of further evidence, all other parties will respond on the record to each issue raised in the Statement. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

***Preclusion:*** At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

***Conduct of Hearing:*** If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

***Official Record:*** An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made in the hearing room will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

***Motions and Objections:*** All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

***Election Details:*** Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

***Oral Argument and Briefs:*** Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be filed only upon special permission of the regional director and within the

time and addressing the subjects permitted by the regional director. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. If allowed, briefs should be double-spaced on 8½ by 11 inch paper. Briefs must be filed in accordance with the provisions of Section 102.111(b) of the Board's Rules. E-Filing of briefs through the Board's website, [www.nlrb.gov](http://www.nlrb.gov), is encouraged, but not required. Facsimile transmission of briefs is NOT permitted.

**Regional Director Decision** - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 14 days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefore.

**Voter List** – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge.

The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction.

To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**Waiver of Time to Use Voter List** – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

**Election** – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

**Withdrawal or Dismissal** – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

## **REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM**

**Completing and Filing this Form:** The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You may E-File your Statement of Position at [www.nlrb.gov](http://www.nlrb.gov), but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

**Note:** *Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to complete items 3, 5, 6, and 8a-8e of the form.*

**Required Lists:** The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

**Consequences of Failure to Supply Information:** Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**STATEMENT OF POSITION**

**DO NOT WRITE IN THIS SPACE**

Case No. <b>29-RC-216327</b>	Date Filed <b>March 12, 2018</b>
---------------------------------	-------------------------------------

**INSTRUCTIONS:** Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.

**Note:** Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards)			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.			
Added		Excluded	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at <a href="http://www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015">www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015</a> . A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an appropriate unit. (Attachment D)			
State your position with respect to the details of any election that may be conducted in this matter. 8a. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
<b>9. Representative who will accept service of all papers for purposes of the representation proceeding</b>			
9a. Full name and title of authorized representative		9b. Signature of authorized representative	9c. Date
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.	9h. Cell No.

**WILLFUL FALSE STATEMENTS ON THIS STATEMENT OF POSITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. Code, Title 18, Section 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

**QUESTIONNAIRE ON COMMERCE INFORMATION**

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

**CASE NAME****CASE NUMBER**

29-RC-216327

**1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)****2. TYPE OF ENTITY**☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify )**3. IF A CORPORATION or LLC**A. STATE OF INCORPORATION  
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

**4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS****5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

**9. DURING THE MOST RECENT (Check appropriate box): ☐ CALENDAR YR ☐ 12 MONTHS or ☐ FISCAL YR (FY dates )****YES NO**A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.  
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.  
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.  
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (*Check the largest amount*)☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.I. **Did you begin operations within the last 12 months?** If yes, specify date: \_\_\_\_\_**10 ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?**☐ YES ☐ NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS**

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

**12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE**

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**STIPULATED ELECTION AGREEMENT**

**Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC**

**Case 29-RC-216327**

The parties **AGREE AS FOLLOWS:**

**1. PROCEDURAL MATTERS.** The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

**2. COMMERCE.** The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC (Employer) a domestic corporation, with its principal office located at 515 Madison Avenue, 31st Floor, New York, NY, and a place of business located at 181 3<sup>rd</sup> Avenue, Brooklyn, NY (the Brooklyn facility) is engaged in the operation of a hotel. Annually, the Employer, in its course and conduct of business operations, derives gross annual revenues in excess of \$500,000 and purchases and receives at its Brooklyn facility goods, supplies, and materials in excess of \$5,000, directly from points outside of the State of New York. The Employer is engaged in commerce within the meaning of the Act.

**3. LABOR ORGANIZATIONS.** Each of Warehouse Production Sales & Allied Service Employees Union Local 811, AFL-CIO (Local 811) and New York Hotel & Motel Trades Council, AFL-CIO (HTC) are organizations in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and are labor organizations within the meaning of Section 2(5) of the Act.

**4. ELECTION.** A secret-ballot election under the Board's Rules and Regulations shall be held under the supervision of the Regional Director on the date and at the hours and places specified below.

**DATE:** June 26, 2018

**HOURS:** 6:45 a.m. to 8:15 a.m.  
2:15 p.m. to 4:45 p.m.

**PLACE:** In Room 1202 of the Employer's Brooklyn facility located at 181 3<sup>rd</sup> Avenue, Brooklyn, New York.

If the election is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

**5. UNIT AND ELIGIBLE VOTERS.** The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time front-desk employees, housemen/bellmen, housekeepers, laundry attendants and food and beverage employees employed by the Employer at 181 3<sup>rd</sup> Avenue, Brooklyn, New York.

Initials: \_\_\_\_\_



Excluded: Executive management, sales personnel, fire safety directors, all other employees including guards and supervisors, as defined by the National Labor Relations Act.

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending June 2, 2018**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls or by mail as described above in paragraph 4.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

**6. VOTER LIST.** Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. The font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

**7. THE BALLOT.** The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of the need to have the Notice of Election and/or ballots translated.

The question on the ballot will be "Do you wish to be represented for collective-bargaining purposes by Warehouse Production Sales & Allied Service Employees Union Local 811, AFL-CIO (Local 811), New York Hotel & Motel Trades Council, AFL-CIO (HTC), or neither?" The choices on the ballot will appear as follows, reading left to right or top to bottom.

**First** Warehouse Production Sales & Allied Service Employees Union Local 811, AFL-CIO (Local 811)

**Second.** New York Hotel & Motel Trades Council, AFL-CIO (HTC)

**Third:** Neither

Any labor organization may have its name removed from the ballot if more than one labor organization is on the ballot and a timely written request is approved by the Regional Director.

Initials: \_\_\_\_\_



Recommended:

Sarah N. Hurley  
SARAH N. HURLEY, Board Agent (Date)

6/8/18

Date approved:

6/8/18

Kerry Ann King

Regional Director, Region 29  
National Labor Relations Board

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**TROUTBROOK COMPANY LLC D/B/A  
BROOKLYN 181 HOSPITALITY LLC**

**Employer**

**and**

**Case 29-RC-216327**

**WAREHOUSE PRODUCTION SALES & ALLIED  
SERVICE EMPLOYEES UNION LOCAL 811,  
LOCAL 811, AFL-CIO**

**Petitioner**

**And**

New York Hotel and Motel Trades Council, AFL-CIO  
**Inervenor**

**ORDER APPROVING EXTENSION OF TIME TO FILE OFFER OF PROOF IN  
SUPPORT OF OBJECTIONS**

On July 2, 2018, the Employer requested an extension of time to file its offer of proof in support of its objections.

I have approved the Employer's request to file its offer of proof by Tuesday, July 10, 2018.

Dated:

---

KATHY DREW-KING  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 29  
Two Metro Tech Center  
Suite 5100  
Brooklyn, NY 11201-3838

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

---

**Troutbrook Company LLC d/b/a Brooklyn 181  
Hospitality LLC**

**Employer,**

**and**

**Case 29-RC-216327**

**New York Hotel & Motel Trades Council, AFL-CIO**

**Intervenor**

**Warehouse Production Sales & Allied Service  
Employees Union Local 811**

**Petitioner**

---

**EMPLOYER'S OBJECTIONS TO CONDUCT  
AFFECTING THE RESULTS OF THE ELECTION**

Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board ("Board"), Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC (the "Employer" or "Troutbrook"), submits the following objections to conduct affecting the results of the election held on June 26, 2018:

1. During the critical period, Intervenor, New York Hotel & Motel Trades Council, AFL-CIO ("Intervenor"), by its agents and representatives, repeatedly threatened and intimidated bargaining unit employees by telling them that if the employees did not vote for Intervenor and the Intervenor was ultimately selected as their representative, Intervenor would not protect these employees from termination or would "not have their backs."

2. During the critical period, Intervenor, by its agents and representatives, repeatedly threatened and intimidated bargaining unit employees by telling them that if the employees did not vote for Intervenor and the Intervenor was ultimately selected as their representative and a strike was called, those employees who did not vote for Intervenor would not receive the payment of strike benefits that all other employees who voted for Intervenor would receive.

3. During the critical period, Intervenor, by its agents and representatives, repeatedly threatened and intimidated bargaining unit employees by telling employees that if they did not vote for Intervenor or sign a card for Intervenor, their employment would be terminated.

4. During the critical period, Intervenor, by its agents and representatives, deliberately misrepresented the NLRB's process by falsely telling bargaining unit employees that the reason the Board postponed the processing of the election petition is because Troutbrook committed unlawful actions that purportedly forced the NLRB to cancel and postpone the election; and that Intervenor "had to sue" Troutbrook so that the election could go forward.

5. During the critical period, Intervenor, by its agents and representatives, deliberately made false claims to bargaining unit employees about the law and the Board's longstanding principles pertaining to the bargaining process, including, among others, stating that: (1) the Employer is required to agree to any bargaining demands that Intervenor makes; (2) that employees with more than five years' experience will automatically receive pensions if Intervenor becomes their representative; and (3) that Intervenor would pay employees \$800 per week if they go out on strike.

6. The NLRB's policy of adjourning representation cases when rival unions who belong to the AFL-CIO file Article XXI proceedings under the AFL-CIO's Constitution, which was applied here, is biased and unfair. No comparable procedural mechanism exists for employers, thus making the policy inherently biased and unfair.

7. The Regional Director abused her discretion by granting a lengthy adjournment in this case for the rival unions to engage in Article XXI proceedings both for the reasons stated above in Objection 6, and for the timing of the adjournment which appeared to be calculated to provide an unfair advantage to the Intervenor since the Region waited until after position statements were filed on the day before the hearing before ordering the adjournment later that day, which allowed the Intervenor to obtain valuable information about the voting group and the issues and positions of all parties that it otherwise would not have been entitled to, and that it was able to utilize throughout the lengthy period of adjournment.<sup>1</sup>

8. The NLRB's conduct described in Objections 6 and 7 above had the effect of creating the impression among bargaining unit employees that Intervenor had the power to manipulate the Board's processes, which Intervenor then deliberately fostered by repeatedly campaigning on the theme that Warehouse Production Sales & Allied Service Employees Union Local 811 ("Petitioner") was a "weak union" whereas Intervenor was a "powerful union"; thus the combined effect of the Board's flawed process and abuse of discretion effectively allowed the Intervenor to derail the Petitioner's support and hijack the Board's process and the rights of the employees to

---

<sup>1</sup> In order to ascertain whether any collusion may have taken place between representatives of the Intervenor and representatives of the Region with respect to the processing of this matter, we request disclosure of all communications that took place between the Region and Intervenor throughout this process.

have a prompt election, as well as to create the impression that the Board favored the Intervenor.

9. The Regional Director further abused her discretion by cancelling the election scheduled for May 31, 2018 for no valid reason at a time when the Petitioner had regained majority support as reflected by a demand for recognition which Troutbrook did not act upon because of the pending question concerning representation; such improper cancellation resulted in an additional delay of almost a month, and further contributed to the impression among employees that Intervenor was controlling the process; created more confusion among employees; fueled Intervenor's false claims described in Objection 4 above; and yet again gave Intervenor additional time, this time after receipt of the Voter List, to pursue its campaign of unlawful threats, intimidation and false claims about the law and about the Board's processes.

10. The NLRB's refusal to cancel in a timely manner: (1) the representation hearing on March 25, 2018, despite its knowledge that AFL-CIO had instituted Article XXI procedures; and (2) the unnecessary cancellation of the election on May 31, 2018, allowed the Intervenor premature access to employee names and contact information, thus providing an unfair advantage to the Intervenor in this proceeding. The NLRB's actions resulted in the Employer being unnecessarily forced to file premature Statements of Position and Voter Lists and again further created the impression that the NLRB favored Intervenor in this proceeding.

11. The Board's 2014 Election Rules violate the NLRA, are impermissibly arbitrary and deny an employers' free speech and due process rights, both on their face and as applied to the Employer. For example, here as set forth above, the Board's



election rules were applied to force the Employer to prematurely divulge information required in its Statement of Position and Voter List, as well as its legal position, months before any such information would have otherwise been required. This resulted in an unfair advantage to the Intervenor, as the Intervenor was provided access to information it would not have otherwise received regarding the bargaining unit and that it used in the pursuit of its objectionable conduct. The 2014 Election Rules require voluminous information and extensive information on extremely short timelines and these Election Rules and their application in this proceeding warrant overturning the election.

12. The Region issued an incorrect Notice of Election and failed to mail the Employer a correct Notice of Election, despite indicating it would do so, resulting in the posting of an improper Notice of Election; therefore the corrected Notice of Election was not posted for the required period of time under the Board's Rules; furthermore even on the "corrected" Notice of Election, the Region misstated the voting times that were set forth in the Stipulated Election Agreement; when such additional error was noted by a representative of the Intervenor on the day of the election, the Board Agent in charge of the election changed the voting hours on the spot to conform to the erroneous notice and in contravention of the Stipulated Election Agreement, thus fostering further confusion among employees and yet again creating the appearance that the Intervenor was controlling the process rather than the Board.

By engaging in the conduct described herein, Intervenor and the NLRB interfered with the employees' free choice in choosing whether to be represented by the Petitioner or no union by intimidating, coercing, and/or restraining employees in making their

choice, and by interfering with their participation in a free and fair election and exercising their Section 7 rights, thereby affecting the outcome of the election.

**WHEREFORE**, the Employer requests that the election be set aside and a new election ordered as soon as the Regional Director deems the circumstances permit, and such other relief be granted as is appropriate.

Dated: July 3, 2018

BOND, SCHOENECK & KING, PLLC

By: 

Raymond J. Pascucci, Esq.  
Tyler T. Hendry, Esq.  
*Attorneys for Employer*  
One Lincoln Center  
Syracuse, New York 13202  
Telephone: (315) 218-8356  
Facsimile: (315) 218-8456

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

In the matter of

**TROUTBROOK COMPANY LLC D/B/A BROOKLYN 181  
HOSPITALITY LLC**  
Employer

and

**Case 29-RC-216327**

**NEW YORK HOTEL & MOTEL TRADES COUNCIL, AFL-CIO**  
Intervenor

and

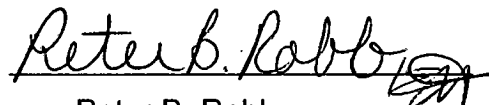
**WAREHOUSE PRODUCTION SALES & ALLIED SERVICE  
EMPLOYEES UNION LOCAL 811**

Petitioner

**ORDER TRANSFERRING CASE  
FROM REGION 29 TO REGION 22**

Case 29-RC-216327 having been filed with the Regional Director for Region 29, and the General Counsel of the Board having duly considered the matter, and deeming it necessary in order to effectuate the purpose of the National Labor Relations Act, and to avoid unnecessary costs and delay,

**IT IS HEREBY ORDERED**, in accordance with the Rules and Regulations of the National Labor Relations Board, that Case 29-RC-216327 be, and hereby is, transferred to and continued in Region 22.

A handwritten signature in black ink, appearing to read "Peter B. Robb", followed by a stylized flourish or mark.

Peter B. Robb  
General Counsel

Dated: July 11, 2018  
at Washington, D.C.

cc: Region 29, Region 22

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**TROUTBROOK COMPANY LLC D/B/A  
BROOKLYN 181 HOSPITALITY LLC**

**Employer**

**and**

**WAREHOUSE PRODUCTION SALES & ALLIED  
SERVICE EMPLOYEES UNION LOCAL 811,  
AFL-CIO**

**Case 29-RC-216327**

**Petitioner**

**and**

**NEW YORK HOTEL & MOTEL TRADES  
COUNCIL, AFL-CIO**

**Intervenor**

**ORDER DIRECTING HEARING AND  
NOTICE OF HEARING ON OBJECTIONS**

Based on a petition filed on March 12, 2018 and pursuant to a Stipulated Election Agreement Decision executed by the parties and approved by the Regional Director for NLRB Region 29 on June 8, 2018, an election was conducted on June 26, 2018 to determine whether a unit of employees of Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC (the Employer) wish to be represented for purposes of collective bargaining by Warehouse Production Sales & Allied Service Employees Union Local 811, AFL-CIO (Petitioner), New York Hotel & Motel Trades Council, AFL-CIO (Intervenor) or neither. That voting unit consists of:

**Included:** All full-time and regular part-time front-desk employees, housemen/bellmen, housekeepers, laundry attendants and food and beverage employees employed by the Employer at 181 3rd Avenue, Brooklyn, New York.

**Excluded:** Executive management, sales personnel, fire safety directors, all other employees including guards and supervisors, as defined by the National Labor Relations Act.

The tally of ballots prepared at the conclusion of the election shows that of the approximately 30 eligible voters, 8 votes were cast for Petitioner, 19 votes were cast for

Intervenor and 1 vote was cast against the participating labor organizations, with 1 challenged ballot, a number that is not sufficient to affect the results of the election.

### **THE OBJECTIONS**

On July 3, 2018, the Employer timely filed “Employer’s Objections to Conduct Affecting the Results of the Election” (“objections”).<sup>1</sup> A copy of the objections is attached to this Order.

### **CONCLUSION AND ORDER**

I have concluded that the evidence described in the offer of proof submitted by the Employer in support of its objections could be grounds for overturning the election if introduced at a hearing. Accordingly, in accordance with Section 102.69(c)(1)(ii) of the Board’s Rules and Regulations, **IT IS ORDERED** that a hearing shall be held before a Hearing Officer designated by me, for the purpose of receiving evidence to resolve the issues raised by the objections. At the hearing, the parties will have the right to appear in person to give testimony, and to examine and cross-examine witnesses.

Upon the conclusion of the hearing, the Hearing Officer shall submit to me and serve on the parties a report containing resolutions of the credibility of witnesses, findings of fact and recommendations as to the disposition of the objections.

### **NOTICE OF HEARING**

Starting at 9:30 a.m. on July 27, 2018, at the offices of the National Labor Relations Board, Region 22, located at Veterans Administration Building, 20 Washington Place, 5<sup>th</sup> Floor, Newark, New Jersey, the hearing on objections as described above will be conducted before a hearing officer of the National Labor Relations Board. The hearing will continue on consecutive days thereafter until completed unless I determine that extraordinary circumstances warrant otherwise.

Dated: July 13, 2018

/s/ Richard Fox

Richard Fox, Acting Regional Director  
National Labor Relations Board, Region 22  
Veterans Administration Building  
20 Washington Place, 5th Floor  
Newark, New Jersey 07102

Attachment

Copy of Employer’s Objections

---

<sup>1</sup> On July 11, 2018, the Board transferred the instant matter to Region 22 for further consideration and processing of the Employer’s objections.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**TROUTBROOK COMPANY LLC D/B/A  
BROOKLYN 181 HOSPITALITY LLC**

**Employer**

**and**

**Case 29-RC-216327**

**WAREHOUSE PRODUCTION SALES & ALLIED  
SERVICE EMPLOYEES UNION LOCAL 811,  
LOCAL 811, AFL-CIO**

**Petitioner**

**ORDER RESCHEDULING HEARING**

**IT IS HEREBY ORDERED** that the hearing in the above-entitled matter is rescheduled from **Friday, July 27, 2018 at 10:00 AM to 10:00 AM Wednesday August 15, 2018** at a Hearing Room, Veterans Administration Building, 20 Washington Place, 5th Floor, Newark, NJ. The hearing will continue on consecutive days until concluded.

Dated: July 27, 2018



---

DAVID E. LEACH III, REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 22  
20 WASHINGTON PLACE, 5<sup>TH</sup> FL  
NEWARK, NJ 07102

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**TROUTBROOK COMPANY LLC D/B/A  
BROOKLYN 181 HOSPITALITY LLC**

**Employer**

**and**

**Case 29-RC-216327**

**WAREHOUSE PRODUCTION SALES & ALLIED  
SERVICE EMPLOYEES UNION LOCAL 811,  
AFL-CIO (LOCAL 811)**

**Petitioner**

**and**

**NEW YORK HOTEL & MOTEL TRADES  
COUNCIL, AFL-CIO (HTC)**

**Intervenor**

**DECISION ON OBJECTIONS, ORDER SETTING ASIDE ELEC TION,  
ORDER CANCELLING HEARING ON OBJECTIONS,  
AND DIRECTION OF SECOND ELECTION**

This Report represents the undersigned Regional Director's administrative decision on Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC's objections to the representation election conducted in this matter on June 26, 2018. As discussed below, I have determined that at least one of the Employer's objections raises substantial and material issues with respect to the conduct of the election requiring that the election be set aside and that a rerun election be conducted.

**PROCEDURAL HISTORY**

Following the filing of a representation petition on March 12, 2018 and of an amended petition on May 31, 2018, and pursuant to a Stipulated Election Agreement executed by the parties and approved by the Regional Director of Region 29 on June 8, 2018, a representation election was conducted on June 26, 2018.<sup>1</sup> The election was to determine whether a unit of employees of Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC (**Employer**) wished be represented for purposes of collective bargaining by Warehouse Production Sales & Allied Service Employees Union Local 811, AFL- CIO (Local 811) (**Petitioner**) or by New York Hotel & Motel Trades Council, AFL-CIO (HTC) (**Intervenor**), or by neither labor organization. The stipulated voting unit consists of:

---

<sup>1</sup> All dates hereafter are in 2018 unless otherwise specified.

**Included:** All full-time and regular part-time front-desk employees, housemen/bellmen, housekeepers, laundry attendants and food and beverage employees employed by the Employer at 181 3rd Avenue, Brooklyn, New York.

**Excluded:** Executive management, sales personnel, fire safety directors, all other employees including guards and supervisors, as defined by the National Labor Relations Act.

The Tally of Ballots that was prepared and made available to the parties at the conclusion of the election discloses the following results.

Approximate number of eligible voters	30
Void ballots	0
Votes cast for Petitioner	8
Votes cast for Intervenor	19
Votes cast against participating labor organizations	1
Valid votes counted	28
Challenged ballots	1
Valid votes counted plus challenged ballots	29

Challenges are not sufficient in number to affect the results of the election.

A majority of the valid votes counted plus challenged ballots has been cast for Intervenor.

On July 3, the Employer timely filed twelve (12) objections<sup>2</sup> to the election and/or to conduct affecting the results of the election, a copy of which is attached hereto as Exhibit 1.

The parties were given opportunity to present evidence and I have carefully considered the issues raised by the Employer's objections and its submitted offer of proof. As discussed more fully below, and pursuant to Section 102.69(c)(1)(ii) of the Board's Rules and Regulations, I conclude that the undisputed facts and issues raised by the Employer in its Objection No. 12 raise substantial and material issues affecting the June 26 election and/or the results of the election requiring that the election be set-aside, and that a rerun election be conducted. Because of the foregoing, it is further determined that the issues raised by the Employer's remaining objections are rendered moot and it is unnecessary to consider these matters further. Based on the foregoing, I will direct that a second election be conducted as described further herein.

### **THE OBJECTIONS**

The Employer raised twelve (12) objections to conduct that it alleges affected the election and/or impacted the results of the election.<sup>3</sup> The objections in summary form are as follows:

**OBJECTIONS NO. 1, 2, 3:** During the critical period, Intervenor repeatedly threatened and intimidated bargaining unit employees.

**OBJECTION NO. 4:** During the critical period, Intervenor deliberately misrepresented the NLRB's process.

---

<sup>2</sup> Petitioner did not file election objections.

<sup>3</sup> The critical period for considering objectionable conduct in this matter extends from March 12, the initial filing date of the petition, to June 26, the date of the election. *Goodyear Tire and Rubber Co.*, 138 NLRB 453 (1952).



- OBJECTION NO. 5:** During the critical period, Intervenor deliberately made false claims to bargaining unit employees regarding the law and the Board's longstanding principles pertaining to the bargaining process.
- OBJECTION NO. 6:** The NLRB's policy of adjourning representation cases when rival unions who belong to the AFL-CIO file Article XXI proceedings under the AFL-CIO's Constitution, which was applied here, is biased and unfair. No comparable procedural mechanism exists for employers, thus making the policy inherently biased and unfair.
- OBJECTION NO. 7:** The Regional Director for Region 29 abused her discretion by granting a lengthy adjournment in this case for the rival unions to engage in Article XXI proceedings.
- OBJECTION NO. 8:** The NLRB's conduct described in Objections 6 and 7 above had the effect of creating the impression among bargaining unit employees that Intervenor had the power to manipulate the Board's processes.
- OBJECTION NO. 9:** The Regional Director further abused her discretion by cancelling the election scheduled for May 31, 2018 for no valid reason.
- OBJECTION NO. 10:** The NLRB's refusal to cancel in a timely manner: (1) the representation hearing on March 25, 2018, despite its knowledge that AFL-CIO had instituted Article XXI procedures; and (2) the unnecessary cancellation of the election on May 31, 2018, allowed the Intervenor premature access to employee names and contact information.
- OBJECTION NO. 11:** The Board's 2014 Election Rules violate the NLRA, are impermissibly arbitrary and deny an employer's free speech and due process rights, both on their face and as applied to the Employer.
- OBJECTION NO. 12:** The Region issued an incorrect Notice of Election and failed to mail the Employer a corrected Notice of Election.

Because the Employer's objections herein include allegations that certain conduct of Region 29 may have interfered with the election, on July 11, the General Counsel transferred the matter to the undersigned Regional Director of Region 22 for investigation and consideration.

After careful consideration, I have concluded that the undisputed facts submitted by the Employer in support of Objection No. 12, *ab ipsius*, raise substantial and material issues requiring that the June 26 election be set aside, I find it unnecessary at this time to consider and/or to investigate further the additional issues raised by the Employer in its remaining objections.

#### **Objection No. 12**

In support of its Objection No. 12, the Employer asserts that the Region issued an incorrect Notice of Election that included a sample ballot that displayed Petitioner as the ONLY choice in the election and, although requested, the Region failed to provide the Employer, in a timely fashion, a corrected Notice of Election, despite indicating it would do so, resulting in the posting of an

incorrect Notice of Election. After being alerted of the error on the initial Notice, the Region provided Corrected Notices to the parties which included an error in the voting times that were specified in the Stipulated Election Agreement, and which were received by the Employer only two days prior to the June 26 election. Moreover, the foregoing was not corrected prior to the conduct of the election itself. Therefore, a correct and accurate Notice of Election was not posted for the required period of time under the Board's Rules. Neither Petitioner nor Intervenor dispute the Employer's assertions and it is, thus, undisputed that the Region issued an incorrect Notice of Election and that a corrected Notice was not posted for the required period prior to the election.

Section 102.67(k) of the Board's Rules and Regulations sets forth the procedures for posting notices of election. The notice must (1) be posted in conspicuous places, including all places where notices to employees in the unit are customarily posted; (2) be posted at least 3 full working days prior to 12:01 a.m. on the day of the election<sup>4</sup>; (3) be distributed electronically, if the employer customarily communicates with employees in the unit electronically; and (4) remain posted until the end of the election. The purpose of the rule is to ensure that employees are informed of the date, time and place of the election, the eligible voting group, the proposition, the choices on the ballot, their rights and the parties' permissible election conduct. An employer's failure properly to post or distribute the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of §102.69(a). The Board has consistently held that a primary consideration in the conduct of any election is whether the employees are given adequate notice and sufficient opportunity to vote. *Cities Service Oil Co.*, 87 NLRB 324, 329 (1949); *Wilson Athletic Goods Mfg. Co.*, 76 NLRB 315 (1948). The notice-posting rule is strictly enforced. *Smith's Food & Drug*, 295 NLRB 983, 983 fn. 1 (1989).

Based on the foregoing, I find under all the circumstances herein that the Employer's objection, in which errors led to accurate and correct Notices not being transmitted and posted for the sufficient requisite time prior to the election, raises substantial and material issues affecting the June 26 election and constitutes *per se* objectionable conduct that interfered with the election requiring that it be set aside and that a rerun election be conducted.

### **RULING ON OBJECTIONS**

Based on the foregoing, I sustain the Employer's Objection No. 12 requiring (1) that the June 26 election be set aside, and (2) that a rerun election be conducted.

### **CONCLUSION AND ORDER**

Having carefully reviewed all of the submitted undisputed evidence, I am sustaining the Employer's Objection No. 12, and find it sufficient to overturn the June 26 election. Based on the foregoing, and noting that my conclusion is based on undisputed evidence, I further find that it is unnecessary to consider the issues raised by the Employer's remaining objections at this time. Accordingly,

**IT IS HEREBY ORDERED** that the election conducted on **June 26, 2018** is set aside and a rerun election shall be conducted by NLRB Region 22 under the supervision of the undersigned.

### **ORDER CANCELLING HEARING ON OBJECTIONS**

On July 13, 2018, the Acting Regional Director issued an Order Directing Hearing and Notice of Hearing on Objections in this matter, scheduling a hearing on July 27, 2018. Thereafter, on July 27, 2018, after prior oral notice to the parties, the undersigned issued an Order Rescheduling

---

<sup>4</sup> The Notice must be posted at least 3 full working days before the election. NLRB Rules Secs. 102.62(e), 102.67(b) and (k); see also CHM secs. 11314-11315; section 24-423.

Hearing, rescheduling the Hearing on Objections to August 15, 2018. Based on my administrative determination, it is unnecessary to conduct the Hearing. Accordingly,

**IT IS HEREBY ORDERED** that the Hearing on Objections scheduled for August 15, 2018 is hereby cancelled.

### **DIRECTION OF SECOND ELECTION**

The National Labor Relations Board will conduct a second secret ballot election among the employees in the same unit as in the first election. Employees will vote on whether or not they wish to be represented for purposes of collective bargaining by Petitioner, Intervenor or neither labor organization. The date, time, and place of the second election will be specified in the Notice of Second Election that will issue shortly. That Notice shall also contain the following language:

#### **NOTICE TO ALL VOTERS**

The election conducted on June 26, 2018 was set aside because the National Labor Relations Board found that the Board issued an incorrect Notice of Election and failed to provide the Employer a correct Notice of Election and this interfered with the employees' exercise of a free and reasoned choice. Therefore, a new election will be held in accordance with the terms of this Notice of Second Election. All eligible voters should understand that the National Labor Relations Act, as amended, gives them the right to cast their ballots as they see fit and protects them in the exercise of this right, free from interference by any of the parties.

Eligible to vote in the second election are those employees in the unit who were employed during the payroll period ending immediately before the date of this Direction of Second Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the date of the first election, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the date of the first election and who have been permanently replaced.

#### **Voter List**

The Employer must provide the undersigned Regional Director and parties named in the decision an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters, accompanied by a certificate of service on all parties. When feasible, the Employer must electronically file the list with the Regional Director and electronically serve the list on the other parties.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **August 7, 2018**, two business days after issuance of this Direction of Second Election. The list must be accompanied by a certificate of service showing service on all parties. **The region**

**will no longer serve the voter list.** The Employer's failure to file or serve the list within the specified time or in the proper format is grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list in the specified time or in the proper format if it is responsible for the failure.

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

#### **Notice Posting**

The Notice of Rerun Election will be prepared and transmitted to the parties, electronically if feasible, shortly. The Employer must post copies of the Notice of Rerun Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least 3 full working days prior to 12:01 a.m. on the day of the election, excluding Saturdays, Sundays and holidays, and must also distribute the Notice of Election electronically to any employees in the unit with whom it customarily communicates electronically. In this case, the notices must be posted and distributed before 12:01 a.m., three working days prior to the date of the rerun election, excluding Saturdays, Sundays and holidays. The Employer's failure to timely post or distribute the election notices is grounds for setting aside the election if proper and timely objections are filed. However, a party is stopped from objecting to the nonposting or nondistribution of notices if it is responsible for the nonposting or nondistribution.

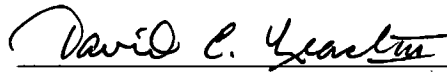
#### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision, which may be combined with a request for review of the regional director's decision to direct an election as provided in Sections 102.67(c) and 102.69(c)(2), if not previously filed. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and may be filed at any time following this decision until 14 days after a final disposition of the proceeding by the regional director. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the

request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: August 3, 2018



---

DAVID E. LEACH III  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 22  
20 WASHINGTON PL  
FL 5  
NEWARK, NJ 07102-3127

Attachment  
Copy of Objections

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22

TROUTBROOK COMPANY LLC D/B/A  
BROOKLYN 181 HOSPITALITY LLC  
Employer

and

Case 29-RC-216327

WAREHOUSE PRODUCTION SALES &  
ALLIED SERVICE EMPLOYEES UNION  
LOCAL 811, AFL-CIO  
Petitioner

and

NEW YORK HOTEL & MOTEL TRADES  
COUNCIL, AFL-CIO  
Intervenor-Cross Petitioner

**ORDER GRANTING PETITIONER'S REQUEST TO WITHDRAW FROM FURTHER  
PARTICIPATION IN PETITION AND NOTICE OF RERUN ELECTION**

The above-captioned Petitioner, having requested to withdraw from further participation in the above-captioned petition, and the above-captioned Intervenor-Cross Petitioner having submitted evidence of Interest sufficient to proceed and having requested to continue the processing of the above-captioned petition in accordance with NLRB Casehandling Manual, *Part Two, Representation Proceedings*, Section 11112.1(b); the Employer and the Intervenor-Cross Petitioner raising no objection to the approval of the Petitioner's request to withdraw from this matter; and the undersigned having duly considered the matter,

**IT IS HEREBY ORDERED** that the Petitioner's request to withdraw from further participation in the above-captioned matter is approved:

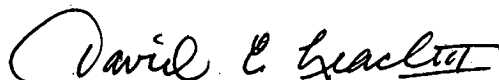
**IT IS FURTHER ORDERED** that, pursuant Decision on Objections, Order Setting Aside Election, Order Cancelling Hearing on Objections, and Direction of Second Election which issued in this matter on August 3, 2018, a rerun election will be conducted by the undersigned on Thursday, September

6, 2018, from 6:45 a.m. to 8:15 a.m. and from 2:15 p.m. to 4:45 p.m., in Room 1202 of the Employer's Brooklyn facility located at 181 3rd Avenue, Brooklyn, New York, subject to the Board's Rules and Regulations. Those eligible shall vote on whether they desire to be represented for collective bargaining purposes by New York Hotel & Motel Trades Council, AFL-CIO (the Intervenor-Cross Petitioner), or to remain unrepresented.

**Posting and Distribution of Election Notices**

Notices of Election will be electronically transmitted to the parties, if feasible, or by overnight mail if not feasible. Section 102.67(k) of the Board's Rules and Regulations requires the Employer to timely post copies of the Board's official Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted. You must also distribute the Notice of Election electronically to any employees in the unit with whom you customarily communicate electronically. In this case, the notices must be posted and distributed **before 12:01 a.m. on Friday, August 31, 2018**. If the Employer does not receive copies of the notice by August 29, 2018, it should notify the Regional Office immediately. Pursuant to Section 102.67(k), a failure to post or distribute the notice precludes an employer from filing objections based on nonposting of the election notice. To make it administratively possible to have election notices and ballots in a language other than English and Spanish, please notify the Board agent immediately if that is necessary for this election. Further, if special accommodations are required for any voters, potential voters, or election participants to vote or reach the voting area, please tell the Board agent as soon as possible.

Issued at Newark, New Jersey, this 27<sup>th</sup> day of August, 2018.



DAVID E. LEACH III, REGIONAL DIRECTOR  
VETERANS ADMINISTRATION BUILDING  
NATIONAL LABOR RELATIONS BOARD  
REGION 22  
20 WASHINGTON PLACE, 5TH FLOOR  
NEWARK, NEW JERSEY 07102

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

---

**Troutbrook Company LLC d/b/a Brooklyn 181  
Hospitality LLC**

**Employer,**

**and**

**Case 29-RC-216327**

**New York Hotel & Motel Trades Council, AFL-CIO**

**Intervenor**

**Warehouse Production Sales & Allied Service  
Employees Union Local 811**

**Petitioner**

---

**EMPLOYER'S OBJECTIONS TO CONDUCT  
AFFECTING THE RESULTS OF THE ELECTIONS**

Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board ("Board"), Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC (the "Employer" or "Troutbrook"), submits the following objections to conduct affecting the results of the elections held on June 26, 2018 & September 6, 2018:

1. During the critical period, Intervenor, New York Hotel & Motel Trades Council, AFL-CIO ("Intervenor"), by its agents and representatives, repeatedly threatened and intimidated bargaining unit employees by telling them that if the employees did not vote for Intervenor and the Intervenor was ultimately selected as their representative, Intervenor would not protect these employees from termination or would "not have their backs."



2. During the critical period, Intervenor, by its agents and representatives, repeatedly threatened and intimidated bargaining unit employees by telling them that if the employees did not vote for Intervenor and the Intervenor was ultimately selected as their representative and a strike was called, those employees who did not vote for Intervenor would not receive the payment of strike benefits that all other employees who voted for Intervenor would receive.

3. During the critical period, Intervenor, by its agents and representatives, repeatedly threatened and intimidated bargaining unit employees by telling employees that if they did not vote for Intervenor or sign a card for Intervenor, their employment would be terminated.

4. During the critical period, Intervenor, by its agents and representatives, deliberately misrepresented the NLRB's process by falsely telling bargaining unit employees that the reason the Board postponed the processing of the election petition is because Troutbrook committed unlawful actions that purportedly forced the NLRB to cancel and postpone the election; and that Intervenor "had to sue" Troutbrook so that the election could go forward.

5. During the critical period, Intervenor, by its agents and representatives, deliberately made false claims to bargaining unit employees about the law and the Board's longstanding principles pertaining to the bargaining process, including, among others, stating that: (1) the Employer is required to agree to any bargaining demands that Intervenor makes; (2) that employees with more than five years' experience will automatically receive pensions if Intervenor becomes their representative; and (3) that Intervenor would pay employees \$800 per week if they go out on strike.

6. The NLRB's policy of adjourning representation cases when rival unions who belong to the AFL-CIO file Article XXI proceedings under the AFL-CIO's Constitution, which was applied here, is biased and unfair. No comparable procedural mechanism exists for employers, thus making the policy inherently biased and unfair.

7. The Regional Director abused her discretion by granting a lengthy adjournment in this case for the rival unions to engage in Article XXI proceedings both for the reasons stated above in Objection 6, and for the timing of the adjournment which appeared to be calculated to provide an unfair advantage to the Intervenor since the Region waited until after position statements were filed on the day before the hearing before ordering the adjournment later that day, which allowed the Intervenor to obtain valuable information about the voting group and the issues and positions of all parties that it otherwise would not have been entitled to, and that it was able to utilize throughout the lengthy period of adjournment.

8. The NLRB's conduct described in Objections 6 and 7 above had the effect of creating the impression among bargaining unit employees that Intervenor had the power to manipulate the Board's processes, which Intervenor then deliberately fostered by repeatedly campaigning on the theme that Warehouse Production Sales & Allied Service Employees Union Local 811 ("Petitioner") was a "weak union" whereas Intervenor was a "powerful union"; thus the combined effect of the Board's flawed process and abuse of discretion effectively allowed the Intervenor to derail the Petitioner's support and hijack the Board's process and the rights of the employees to have a prompt election, as well as to create the impression that the Board favored the Intervenor.

9. The Regional Director further abused her discretion by cancelling the election scheduled for May 31, 2018 for no valid reason at a time when the Petitioner had regained majority support as reflected by a demand for recognition which Troutbrook did not act upon because of the pending question concerning representation; such improper cancellation resulted in an additional delay of almost a month, and further contributed to the impression among employees that Intervenor was controlling the process; created more confusion among employees; fueled Intervenor's false claims described in Objection 4 above; and yet again gave Intervenor additional time, this time after receipt of the Voter List, to pursue its campaign of unlawful threats, intimidation and false claims about the law and about the Board's processes.

10. The NLRB's refusal to cancel in a timely manner: (1) the representation hearing on March 25, 2018, despite its knowledge that AFL-CIO had instituted Article XXI procedures; and (2) the unnecessary cancellation of the election on May 31, 2018, allowed the Intervenor premature access to employee names and contact information, thus providing an unfair advantage to the Intervenor in this proceeding. The NLRB's actions resulted in the Employer being unnecessarily forced to file premature Statements of Position and Voter Lists and again further created the impression that the NLRB favored Intervenor in this proceeding.

11. The Board's 2014 Election Rules violate the NLRA, are impermissibly arbitrary and deny an employers' free speech and due process rights, both on their face and as applied to the Employer. For example, here as set forth above, the Board's election rules were applied to force the Employer to prematurely divulge information required in its Statement of Position and Voter List, as well as its legal position, months

before any such information would have otherwise been required. This resulted in an unfair advantage to the Intervenor, as the Intervenor was provided access to information it would not have otherwise received regarding the bargaining unit and that it used in the pursuit of its objectionable conduct. The 2014 Election Rules require voluminous information and extensive information on extremely short timelines and these Election Rules and their application in this proceeding warrant overturning the election.

12. At the June 26, 2018 election, the Corrected Notice of Election misstated the voting times that were set forth in the Stipulated Election Agreement; when such additional error was noted by a representative of the Intervenor on the day of the election, the Board Agent in charge of the election changed the voting hours on the spot to conform to the erroneous notice and in contravention of the Stipulated Election Agreement, thus fostering further confusion among employees and yet again creating the appearance that the Intervenor was controlling the process rather than the Board.

By engaging in the conduct described herein, Intervenor and the NLRB interfered with the employees' free choice in choosing whether to be represented by the Petitioner or no union by intimidating, coercing, and/or restraining employees in making their choice, and by interfering with their participation in free and fair elections and exercising their Section 7 rights, thereby affecting the outcome of the elections.

**WHEREFORE**, the Employer requests that the election be set aside and a new election ordered as soon as the Regional Director deems the circumstances permit, and such other relief be granted as is appropriate.

Date: September 13, 2018

BOND, SCHOENECK & KING, PLLC

By: 

Raymond J. Pascucci, Esq.  
Tyler T. Hendry, Esq.  
*Attorneys for Employer*  
One Lincoln Center  
Syracuse, New York 13202  
Telephone: (315) 218-8356  
Facsimile: (315) 218-8456

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22

TROUTBROOK COMPANY LLC D/B/A  
BROOKLYN 181 HOSPITALITY LLC  
Employer

and

Case 29-RC-216327

NEW YORK HOTEL & MOTEL TRADES  
COUNCIL, AFL-CIO (HTC)  
Intervenor-Cross Petitioner

**DECISION ON OBJECTIONS TO RERUN ELECTION,  
AND CERTIFICATION OF REPRESENTATIVE**

This Report represents the undersigned Regional Director's administrative decision on Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC's objections to the rerun representation election conducted in this matter on September 6, 2018. As discussed below, I have determined that the Employer's objections to the rerun election, individually and collectively, and the Employer's offer of proof in support of its objections, do not raise substantial and material affecting September 6 rerun election. Accordingly, pursuant to Section 102.69(c)(1)(i) of the Board's Rules and Regulations, I am overruling the Employer's objections in their entirety, and issuing a Certification of Representative.

**PROCEDURAL HISTORY**

As noted in my prior Decision on Objections which issued on August 3 following the first election in this matter, following the filing of a representation petition on March 12, 2018, and of an amended petition on May 31, 2018, and pursuant to a Stipulated Election Agreement executed by the parties and approved by the Regional Director of Region 29 on June 8, 2018, an initial representation election was conducted on June 26, 2018.<sup>1</sup> The election was to determine whether a unit of employees of Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC (**Employer**) wished be represented for purposes of collective bargaining by Warehouse Production Sales & Allied Service Employees Union Local 811, AFL- CIO (Local 811) (**Petitioner**) or by New York Hotel & Motel Trades Council, AFL-CIO (HTC) (**Intervenor**), or by neither labor organization. The stipulated voting unit consists of:

**Included:** All full-time and regular part-time front-desk employees, housemen/bellmen, housekeepers, laundry attendants and food and beverage employees employed by the Employer at 181 3rd Avenue, Brooklyn, New York.

---

<sup>1</sup> All dates hereafter are in 2018 unless otherwise specified.

**Excluded:** Executive management, sales personnel, fire safety directors, all other employees including guards and supervisors, as defined by the National Labor Relations Act.

The Tally of Ballots that was prepared and made available to the parties at the conclusion of the first election disclosed the following: Of approximately 30 eligible voters, there were 0 void ballots, 8 votes were cast in favor of Petitioner, 19 votes were cast in favor of Intervenor, 1 vote was cast against both participating labor organizations and there was 1 challenged ballot which was not sufficient in number to affect the results of the election. Thus, based on the foregoing, the Tally noted that a majority of the valid votes counted plus challenged ballots was cast for Intervenor.

On July 3, the Employer timely filed twelve (12) objections to the first election and/or to conduct affecting the results of the first election.

Because the Employer's objections included allegations that certain conduct of Region 29 may have interfered with the election, on July 11 the General Counsel transferred the matter to the undersigned Regional Director of Region 22 for investigation, consideration and processing.

The parties were given opportunity to present evidence, after which I considered the issues raised by the Employer's objections and its submitted offer of proof. Pursuant to Section 102.69(c)(1)(ii) of the Board's Rules and Regulations, on August 3, I issued a Decision on Objections, Order Setting Aside Election and Notice of Rerun Election (August 3 Decision). In the August 3 Decision, I administratively concluded that the undisputed facts and issues raised by the Employer in its Objection No. 12 raised substantial and material issues affecting the June 26 election and/or the results of the election requiring that the election be set-aside, and that a rerun election be conducted. Because of the foregoing, it was further determined that the issues raised by the Employer's remaining objections were rendered moot and it was unnecessary to consider those matters further. Based on the foregoing, I directed that a second election be conducted.

On August 23, Petitioner requested to withdraw from further participation in this matter.

On August 27, I issued an Order Granting Petitioner's Request to Withdraw from Further Participation in Petition and Notice of Rerun Election, granting Petitioner's request and scheduling the rerun election to be conducted on Thursday, September 6 from 6:45 a.m. to 8:15 a.m. and from 2:15 p.m. to 4:45 p.m. at the same location at the Employer's Brooklyn, New York facility as had been utilized for the first election. In the Order, I further noted *inter alia* that eligible employees shall vote on whether they desire to be represented for collective-bargaining purposes by the Intervenor-Cross Petitioner, or to remain unrepresented.

The Tally of Ballots that was prepared and made available to the parties at the conclusion of the September 6 rerun election disclosed the following:

**TALLY OF BALLOTS (Rerun Election)**

Approximate Number of Eligible Voters.....	29
Void Ballots.....	0
Votes Cast for Intervenor-Cross Petitioner.....	18
Votes Cast Against Participating Labor Organization.....	8
Number of Valid Votes Counted.....	26
Number of Challenged Ballots.....	0
Number of Valid Votes Counted Plus Challenged Ballots.....	26

Challenges are not sufficient in number to affect the results of the election.

A majority of the valid votes counted plus challenged ballots has been cast for New York Hotel & Motel Trades Council, AFL-CIO (HTC).

On September 13, the Employer timely filed twelve (12) objections to the rerun election and/or to conduct affecting the results of the rerun election, a copy of which is attached hereto.

The parties were given opportunity to present evidence, and I considered the issues raised by the Employer's objections and its submitted offer of proof.

### **THE OBJECTIONS TO THE RERUN ELECTION**

As noted *supra*, the Employer filed twelve (12) objections after the first election. The Employer submitted and raised these EXACT SAME twelve (12) objections to conduct that it alleges affected the RERUN election and/or impacted the results of the RERUN election. The objections in summary form are as follows:

**OBJECTIONS NO. 1, 2, 3:** During the critical period, Intervenor repeatedly threatened and intimidated bargaining unit employees.

**OBJECTION NO. 4:** During the critical period, Intervenor deliberately misrepresented the NLRB's process.

**OBJECTION NO. 5:** During the critical period, Intervenor deliberately made false claims to bargaining unit employees regarding the law and the Board's longstanding principles pertaining to the bargaining process.

**OBJECTION NO. 6:** The NLRB's policy of adjourning representation cases when rival unions who belong to the AFL-CIO file Article XXI proceedings under the AFL-CIO's Constitution, which was applied here, is biased and unfair. No comparable procedural mechanism exists for employers, thus making the policy inherently biased and unfair.

**OBJECTION NO. 7:** The Regional Director for Region 29 abused her discretion by granting a lengthy adjournment in this case for the rival unions to engage in Article XXI proceedings.

**OBJECTION NO. 8:** The NLRB's conduct described in Objections 6 and 7 above had the effect of creating the impression among bargaining unit employees that Intervenor had the power to manipulate the Board's processes.

**OBJECTION NO. 9:** The Regional Director further abused her discretion by cancelling the election scheduled for May 31, 2018 for no valid reason.

**OBJECTION NO. 10:** The NLRB's refusal to cancel in a timely manner: (1) the representation hearing on March 25, 2018, despite its knowledge that AFL-CIO had instituted Article XXI procedures; and (2) the unnecessary cancellation of the election on May 31, 2018, allowed the Intervenor premature access to employee names and contact information.



- OBJECTION NO. 11:** The Board's 2014 Election Rules violate the NLRA, are impermissibly arbitrary and deny an employer's free speech and due process rights, both on their face and as applied to the Employer.
- OBJECTION NO. 12:** The Region issued an incorrect Notice of Election and failed to mail the Employer a corrected Notice of Election.

After careful consideration, I have concluded that the undisputed facts submitted by the Employer in support of its Objections fail to raise substantial and material issues requiring that the September 6 rerun election be set aside.

**Objections No. 1-10 and 12**

A careful review of the Employer's September 13 objections to the rerun election reveals that the Employer submitted identical objections to the rerun election as it submitted on July 3 after the June 26 first election. Further, the Employer's submitted Offer of Proof and supporting exhibits accompanying its September 13 objections indicates that, with respect to its Objections No. 1-10 (inclusive) and 12, the Employer is relying exclusively on evidence of allegedly objectionable conduct by Petitioner and NLRB Region 29 that occurred during the critical period prior to the first election.

As noted at footnote 3 of the undersigned's August 3 Decision, the critical period for considering objectionable conduct to the June 26 election "extends from March 12, the initial filing date of the petition, to June 26, the date of the election. *Goodyear Tire and Rubber Co.*, 138 NLRB 453 (1952)." The foregoing is with respect to the initial election in this matter and in determining to overturn the June 26 election, I considered the Employer's objections alleging conduct that occurred exclusively during this period.

It has long been held, however, that conduct to be considered in connection with objections to a rerun election is that which occurred *from the date of the prior election* (i.e. **from** the date of the June 26 election in this matter). *Singer Co.*, 161 NLRB 956 fn. 2 (1966). The Board has further clarified that "the critical period for a second election commences as of the date of the first election." *Star Kist Caribe, Inc.*, 325 NLRB 304 (1998), citing *Times Wire & Cable Co.*, 280 NLRB 19, 20 fn. 10 (1986); *Singer Co.*, *supra*. The allegedly objectionable conduct to the rerun election raised in the Employer's Objections No. 1 through 10, inclusive, and 12, fell within the critical period for the first election, and the undersigned determined that the Employer's Objection No. 12, in which errors led to accurate and correct Notices not being transmitted and posted for the sufficient requisite time prior to the election, raised substantial and material issues affecting the June 26 election and constituted *per se* objectionable conduct that interfered with *that* election requiring that it be set aside and that a rerun election be conducted. The only remedy once one or more of the Employer's July 3 objections was found to have raised issues affecting the June 26 election was to rerun that election. Once remedied in this manner, the same allegations of objectionable conduct may not form the basis for overturning a subsequent and otherwise valid rerun election.

Inasmuch as the Employer has failed to submit evidence of any objectionable conduct that occurred during the critical period for the rerun election herein, I find that the Employer's Objections No. 1-10, inclusive, and 12 fail to raise substantial and material issues that affected the September 6 rerun election requiring that it be set aside. Therefore, I dismiss the Employer's Objections No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 12.

### **Objection No. 11**

In its Objection No. 11, the Employer generally objects to the application of the Board's 2015 representation case procedures rules (the Rules). The Employer contends that the Rules violate the NLRA, are impermissibly arbitrary, and an abuse of discretion, and that the Rules violate due process and infringe upon the Employer's free speech rights under the Act and the United States Constitution. The Employer further objects to application of the Rules herein on any other ground raised in the two lawsuits that have challenged their validity and application. See *Associated Builders and Contractors of Texas Inc., et al., v. National Labor Relations Board*, Docket No. 15-50497 (5th Cir. 2015), and *Baker DC, LLC v. National Labor Relations Board*, Docket No. 15-0057 (D.C. Cir. 2015). The Employer's general contentions were fully answered in the Board's justification for the Rules as set forth in the Federal Register. See *Pulau Corp.*, 363 NLRB No. 8 (2015). Further, in the only Federal district court decisions to date concerning a challenge to the validity of the Rules, the Rules were upheld. See *Chamber of Commerce of the United States v. NLRB*, 118 F.Supp.3d 171 (D. D.C. 2015); and *Associated Builders and Contractors of Texas, Inc. et al., v. NLRB*, 2015 WL 3609116, 203 LRRM 3199 (W.D. Tex. 2015). Moreover, the Employer has presented no specific evidence showing that its due process or First Amendment rights were abridged. For the foregoing reasons, I hereby dismiss the Employer's Objection No. 11.

Thus, I overrule the objections in their entirety and issue the following Certification of Representative.

### **CERTIFICATION OF REPRESENTATIVE**

**IT IS HEREBY CERTIFIED** that a majority of the valid ballots have been cast for **New York Hotel & Motel Trades Council, AFL-CIO (HTC)**, and that it is the exclusive representative of all the employees in the following bargaining unit:

**Included:** All full-time and regular part-time front-desk employees, housemen/bellmen, housekeepers, laundry attendants and food and beverage employees employed by the Employer at 181 3rd Avenue, Brooklyn, New York.

**Excluded:** Executive management, sales personnel, fire safety directors, all other employees including guards and supervisors, as defined by the National Labor Relations Act.

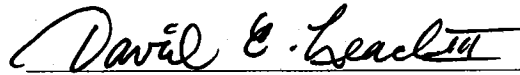
### **REQUEST FOR REVIEW**

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by October 8, 2018. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the

request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: September 24, 2018

A handwritten signature in cursive script, reading "David E. Leach III", written in black ink.

---

DAVID E. LEACH III  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 22  
20 WASHINGTON PL  
FL 5  
NEWARK, NJ 07102-3127

Attachment  
Copy of Objections